



# Personnel Administration

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THE FIELD OF PERSONNEL ADMINISTRATION in libraries has its full share of problems and, possibly, more of its problems have legal aspects than has any other phase of library administration discussed in this symposium. If we accept the dictum, as this author believes we must, that "Personnel is the Key to Administration," we are thereby saying that the legal problems involved in personnel administration are the very core and heart of our subject. Only people have differences and only people get into legal difficulties. Things may get out of repair or act differently from what was expected, but things never made or broke a promise, filed a claim, or instituted legal proceedings. Justice or injustice in working conditions and the nature and quality of behavior are, in the broadest interpretation, concepts within the area of interpersonal relationships. They relate only to people.

Librarians, as citizens and tax-payers, are, of course, subject to the same civil and criminal laws as are people in all other walks of life. This chapter discussing legal aspects of personnel administration in libraries is necessarily viewing the librarian specifically in his work-relationships, as a public or private official or employee.

In relation to public, that is tax-supported libraries, the basic controls over both legal responsibility and administrative authority, as in the general field of public administration, stem from state legislation. Such legislation may be either general in scope relating, for example, to all public employee pensions, or distinctly specific, covering only the pensioning of librarians in cities of the first class. This subject of basic state law is primarily covered in C. C. Moreland's chapter but is necessarily referred to more than once in all other contributions to this symposium. It is essential to refer to it here as basic laws are likely to indicate where the primary legal responsibility lies in regard to personnel selection and administration

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in public libraries, even though the bylaws of the library board will be more specific, especially regarding the delegation of authority to a library administrator, as the immediately foregoing essay by Mrs. Gallagher has so clearly pointed out.

Extracts from the state library laws of New Jersey and the Bylaws of the Newark Public Library Board provide a good illustration of how personnel responsibility may be set up in both types of legal sources. "The board . . . may rent rooms . . . construct buildings . . . purchase books . . . hire librarians, and other necessary personnel, and fix their compensation . . . and generally do all things necessary and proper for the establishment and maintenance of the free public library in the municipality. . . ." <sup>1</sup>

The Board of Trustees of the Newark Free Public Library has incorporated into its amended By-laws verbatim the entire text above, as Section 1.a of its Article III. (Note that the library was placed under Civil Service by referendum in 1910.) <sup>2</sup> Additional sections of the By-laws relating to personnel administration read as follows:

SECTION 2. a. Subject to the Civil Service Laws and Regulations of the State applicable, and Sec. 40:54-12 of the Revised Statutes, the Board shall appoint all library officers and employees, determine their number, fix their salaries or wages and retain them during its pleasure.

b. Salary and wage increases shall be made at the discretion of the Board in accordance with regulations set forth in the Position Classification and Pay Plan of the Library and such Civil Service Laws and Rules as may be applicable.

SECTION 3. If charges are preferred against any officer or employee of the Board or Library, he or she shall have the right to an investigation and a hearing before the Board.

ARTICLE IV. SECTION 1. a. The Director shall be the executive and administrative officer of the Board of Trustees and of the Library, and under these By-Laws and the Board's declared policies and rules shall have general charge of the Library and of all persons employed therein by the Board. He shall recommend the appointment and determine the duties of all employees, shall recommend to the Board for adoption a Position Classification and Pay Plan and shall administer the plan when adopted. He shall be held responsible to the Board for the proper management of the Library, for the preservation and care of its property, and for the discipline and efficiency of its staff and service.

b. The Board specifically delegates to the Director as its executive officer interim authority to appoint all part-time, or temporary em-

ployees and all employees in the non-competitive classified service, which appointments shall be reported to the Board monthly for its approval.

The Director shall certify to the correctness of all bills before their approval by the Board, except in the case of expenditures directly ordered by the Board or one of its Committees.

SECTION 2. a. In the absence (other than temporary) of the Director, the Trustees shall designate the Assistant Director or a head of a department "Acting Director," who shall, for the interim, have the powers, duties and responsibilities assigned the Director in these By-laws.

b. In the temporary absence of the Director the Assistant Director shall attend to the details of the management of the Library, subject to such instructions as the Director may have issued to cover the interim.

At various other places in the By-laws where specific duties of board officers and the director are prescribed there are additional provisions which have a bearing on personnel administration, such as:

ARTICLE I. SECTION 3: b. *The Director* of the Newark Public Library shall serve as assistant secretary of the Board, ex-officio.

Under this assignment the library director carries out all the routine responsibilities of the secretary, subject to his approval. The secretary, under New Jersey law, must be one of the appointed, unsalaried board members. These responsibilities will be noted later.

SECTION 7: b. The Treasurer<sup>2</sup> shall be the disbursing officer of the Board, shall have charge of its funds and shall keep the accounts of the Board. He shall pay all bills properly approved by the majority of the Board or ordered paid by the Board at any open regular or special meeting, except the monthly or semi-monthly payroll which shall be paid upon the approval of the President of the Board *and the Director*. In the absence of the President, the vice-president or a Trustee designated by the Board shall exercise this function of payroll approval.

A subsequent action of the board states:<sup>3</sup> "In the case of the inability of the Treasurer to perform this function due to absence or illness, any member of the Board designated in writing by the President shall temporarily so serve."

SECTION 9: No individual officer or member of the Board has authority to issue orders for or in the name of the Board unless especially empowered so to do by a majority of the Board so voting at

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a regular or duly called special meeting of the Board where a quorum is present.

SECTION 10: a. There shall be the following standing committees of three members each, (not counting the President, ex-officio) appointed by the President at the annual meeting to serve for one year and until their successors shall be appointed.

1. ....
2. Personnel and Salaries.
3. ....
4. ....
5. Medical Library and Medical Personnel Problems.

b. These committees shall have advisory powers only, not administrative, except on matters referred to them by vote of the Board "with power to act."

c. Special committees may be appointed at any time by the President or authorized and appointed by the Board. They shall be advisory only unless clothed by the Board "with power."

The board secretary's responsibilities specified in the By-laws, the routine aspects of which devolve upon the director as assistant secretary, are:

ARTICLE I. SECTION 7: c. Gifts of money, securities or real property made to the Library or Board for Library purposes shall be acknowledged by the Secretary, reported to the Board, and managed by the Treasurer as directed by the Board.

SECTION 8. a. The Secretary of the Board shall keep full and correct reports of all proceedings.

b. He shall give notice in writing of all regular meetings of the Board at least four days in advance of such meetings and notice of all special meetings at least 24 hours before the time of such meetings. He shall give notice to all committee members of the meetings of regular, standing or special committees when so requested by the Committee's Chairman.

Even in the case of the somewhat elaborate By-law provisions cited, there is still a slight legal uncertainty as to some points. For example, how would the situation be resolved if the board appointed someone whom the library director would not recommend; or if the board refused to confirm the appointment of a temporary employee after having placed full authority to make such appointments in the hands of the administrator. It is possible that in such a contingency the library board would, by proper vote, suspend the By-laws and

act directly under the appointing authority granted it in the state law itself, subject to civil service provisions.

In some cases city charters (which have been approved by a state legislature as well as the electorate of the municipality) have specific provisions regarding the powers and duties of the chief librarian, in which case a board cannot overrule his decisions within his area of specified jurisdiction. It is well to keep in mind, however, that library boards are more often, as the preceding author has noted, legally constituted administrative agencies in themselves and not merely policy-determining agencies, as is too often assumed by librarians.

This is not the place to discuss administrative law in detail, but one may allude to it in a discussion of the legal basis of personnel administration to point out, in J. M. Pfiffner's phrase, ("over-simplified" he calls it,) "that the guiding motif of administrative law, the constant, all pervading concern, is the amount of discretion which the law permits officers and agencies to exercise."<sup>4</sup> Pfiffner's volume on public administration has an entire section devoted to "Personnel" and another devoted to "Administrative Law." It may be recalled at this point that administrative law both sets the legal basis for administrative action and at the same time comprehends the basic rules, regulations, and decisions that come out of such administrative action.

Non-library legislation directly affecting personnel in libraries would be, primarily, laws relating to public employees generally. Legislative provisions of this sort may relate to such things as: setting up Civil Service Commissions at different levels of government (federal, state, county, municipal) and authorizing such commissions to adopt rules and regulations having the force of law, retirement and pensions for all public employees, strike control, granting of bonuses uniformly, workmen's compensation, federal withholding tax procedure, social security, loyalty oaths, veteran's preference, local residence preference, employment of minors, political activity of public employees, discrimination in employment because of race, religion, color or ancestry. Actually legislation not specifically aimed at libraries or library personnel provides legal controls for far more questions relating to them than does so-called library legislation itself.

Even in municipalities general state laws are also likely to control such questions as whether or not only "certified" librarians may legally be employed; and the nature, extent of coverage, and administration of pension systems. However, especially in strong home-rule states, these same questions may be entirely controlled by provisions in municipal charters and ordinances authorized by them.

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Thus here are several areas of possible legal doubt which library boards and administrators must resolve definitely before taking action which might otherwise jeopardize the rights or security of many employees. For example, in certain California cities, provisions in their home-rule charters govern the question of civil service and pensions as well as certain other personnel matters. Again, in New Jersey a city may have a charter which does not even mention the library board or library, yet, by virtue of general state laws or charter provisions based on them, the city council has control of the total appropriation to be allotted to the library of which well over half, possibly eighty per cent, will go for salaries and wages of the library staff. Incidentally, all of such staff must be appointed in accordance with state civil service provisions for, years ago, the New Jersey Supreme Court held that when a city adopted civil service by referendum the public library was definitely included.<sup>5</sup>

In any discussion of civil service as applied to library personnel it may be noted that New Jersey furnishes, in one very definite respect, an atypical situation. Civil service in all local public jurisdictions in the state, though adopted by local referenda, is still operated by a state commission, not by a local commission or agency. However, the legal authority of the Civil Service Commission over public personnel matters is different in the area of state employment from what it is in the municipal field; in the latter, being distinctly more limited. This again points up the continuing necessity for reminding the reader that when determining a course of action in his particular jurisdiction he must ascertain accurately the exact legal situation facing him.

When legal advisors differ the library administrator may actually be in sort of a legal no man's land. There are many areas of unresolved conflict of laws where there are definite differences of legal opinion which the courts have never been called upon to settle. To illustrate from the personnel field, a state might have both a local residence preference law regarding the appointment of candidates for positions as well as a veteran's preference law, and the courts might not have had occasion to pass upon the question of which takes precedence. Also the question of what is meant legally by the phrase "continuous employment" in pension legislation (sometimes the determining factor in an individual's pensionability) has been decided differently in different court cases. Involved are such questions as: was there an involuntary hiatus in tenure; during such break did the person concerned accept other employment; what bearing has a requested leave of absence on continuous employment if the official

state of employment has not actually been terminated by formal action?

Other doubtful situations frequently arise. Loyalty oaths may be the subject of both state and municipal legislation; in more than one state practice varies from city to city, even between different departments in the same city. State laws concerning compulsory minimum wages in industry and the minimum age for full-time employment may or may not apply in the public service and so to a public library's employment policy. Compulsory local or state pension systems sometimes apply to all part-time, student help, whether employed on a permanent or a temporary basis; in others, not. Again despite civil service rules and regulations calling for uniform requirements concerning the work week, the weekly hours to be worked on a regular schedule, vacations, and so on, actual work schedules in force in the public library and in the City Hall may vary from thirty-nine hours per week in the one case to thirty in the other in the same municipality.

There are many other legal aspects to the problems of personnel administration in libraries and in discussing them it is still not with the idea of providing here in any sense a legal textbook of the subject but merely to alert administrators and laymen trustees. Little attention is therefore paid in this particular chapter to the solution of problems obviously and definitely solved by statutory provisions. For example, reference has already been made to the fact that certification of librarians is based wholly on specific legislation and it has not seemed necessary to reproduce sample laws already easily available in many places. It is believed more important and appropriate to this discussion to point out that there would be a definite and possibly unanticipated legal problem if a library board should fail to heed the requirements of a certification law and would employ a non-certified person in a professional position contrary to law. Some certification laws provide adequate penalties for non-conformance by the withholding of state financial aid, or even any appropriation from public funds. A special problem arises in situations where the specific law does not specify any enforceable penalty. Any one aggrieved by such case (or any taxpayer) would do well to consult an attorney and see whether, even without any penalty stated in the certification law, he could not bring an action against the board for nonfeasance in office.<sup>6</sup>

The types of expenses acceptable as legitimate official traveling



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expenses frequently pose difficulty. The legal situation regarding the payment of travel expenses of librarians and trustees to conventions or on trips of inquiry or inspection of other library systems, definitely differs in different jurisdictions and has even changed in the same jurisdiction. According to Ohio's state librarian, Ohio law since 1947 has permitted it whereas, formerly, in the absence of a specific legal authorization, a legal opinion from the attorney general had declared against it.<sup>7</sup> In California a law compels county librarians to travel with expenses fully paid to their annual conventions called by the state librarian.<sup>8</sup> In the state of Washington in 1917, a mayor who refused to sign a warrant for the repayment to the librarian of expenses incurred on specific authorization of the library board was ultimately ordered to sign by the Superior Court. The Court held that whether or not a certain expense was legitimate for a library to incur was a matter exclusively within the discretion of the library board to determine. In this particular instance the action dragged on thirteen months in the courts but the award of reimbursement contained six per cent interest additional to the original sum, for the delay.<sup>9</sup>

The circumstances under which the library may be responsible for the dues of its staff in clubs and associations such as chambers of commerce, labor unions, professional library organizations, and civil service associations, is not clear. All librarians know of the necessity for personal membership in many societies as a means of subscription to important technical publications available only to association members. They also recognize the desirability of membership in many local organizations purely in the interests of better public relations for the library. Practice is varied. The real question is what is the law, if any, in a given jurisdiction, for existing legal opinions are known to differ, and are sometimes wrong.

When a community adopts civil service by referendum it is not always clear whether all employees are blanketed into the positions permanently or only temporarily. If permanently, as far as their immediate status is concerned, the question arises as to their eligibility for promotion to all higher ranks in their own series of classes of positions.

Can an employee give up his legal rights by filing a disclaimer or disavowal? The Public Laws of New Jersey<sup>10</sup> specifically authorize veterans to waive a portion of a pension received under any State Pension Act. The reason for this is that by so doing veterans may obtain a larger federal pension. Nevertheless, a librarian should check



carefully before hiring an older candidate for a position with the understanding that he will never claim the right to a pension. Having served until all the legal requirements for pension eligibility are fulfilled, he may still be entitled to the pension despite the prior agreement.

In connection with laws against discrimination on the basis of race, creed, color, national origin or ancestry, the legal question must be raised in connection with application blanks for positions in libraries as to whether or not one may ask any questions that will reveal in their answers data on the race, creed, color, national origin, or ancestry of an applicant. While in New Jersey the answer is "no,"<sup>11</sup> the answer may be quite different in New Mexico from what it is in New Jersey or New York or Alabama, Texas or Maine. Further, a library in a state not having a state anti-discrimination law, would have to observe the federal law in this respect if it received federal aid. In other words, the laws against discrimination in employment which have developed largely since the original Fair Employment Practices Act are quite specific and, as indicated, differ in various jurisdictions or may not exist at all.

As can easily be seen the questions are many and varied. A few others of interest are briefly noted: May a library board institute a plan of money awards for valuable suggestions from employees? In the federal service the practice is based on specific legislation authorizing it. In some states there is permissive legislation in spite of constitutional prohibitions on giving away any public money.

Is nepotism illegal? In some states, as Florida it is.<sup>12</sup> Incidentally, for a recent, thorough discussion of this touchy subject as viewed in American industry see the article by Perrin Stryker, "Would You Hire Your Son?" in *Fortune*,<sup>13</sup> and as it applies in libraries in the article by R. M. Lightfoot.<sup>14</sup>

When an appointing authority terminates the appointment of an employee at the end of his probationary period without giving specific reasons, may there be an appeal to the courts? Here the laws differ greatly.

Other areas of library personnel administration having important legal aspects are hospitalization and medical and surgical plans (either compulsory or optional), plural office holding, e.g., may a school teacher or school librarian working full time in the school system be employed additional part time by a public library in the same community; accepting fees from the state or another municipality for

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consultant services while drawing a full-time public employment salary (some civil service laws or general state laws forbid this); refusal to take a legally required loyalty oath a second time, such as at the time of reappointment, or promotion.

In regard to the number, if not the legality, of fringe benefits, even one who has preached and practiced a degree of democracy in administration might be disposed to remark that the fringe(s)—and not too gradually—seem to be getting longer and longer. If the mixed metaphor were not prohibited, it could even be suggested that the fringe, in some cases, seems to wag the surrey! Fringe benefits are more and more coming to be written into law and may be legally questionable where they are not.

Human nature being what it is, librarianship at all levels is not immune from its share of problems in the areas of both criminal law and legal medicine. Members of the human family, wherever placed and whether of high or low estate, occasionally slip ethically or morally, and have their emotional crises and mental breakdowns. Complicated, difficult, delicate, and tragic situations may arise, the legal aspects of which must be faced. In American library history both librarians and library trustees who have broken the law have been known ultimately to have paid the penalty and to have occupied "positions" in state institutions where board is furnished free and certain labor is required not in the original job specification.

A number of the larger libraries have found it necessary to have in their personnel organizations a position known as "library investigator" or "supervisor of security of persons and property." The class specification or job description for this position in the Newark Public Library reads as follows:

*Definition:* Under supervision to detect and investigate infractions of law, municipal ordinances and library regulations affecting library property, operations and personnel; to supervise, plan and direct the library's program for security of persons and property; and to do related work as required.

*Examples of Work:* Trains and supervises staff members engaged in retrieval of overdue library books and in other phases of the library's security activities; protects library property and enforces laws and municipal ordinances and library regulations by detecting and investigating cases of theft, mutilation, fraudulent registration, withholding of library property, disorderly conduct, indecency, intoxication, malicious mischief, alteration of records, and any infractions that involve library property, personnel, or the use of library facilities; arrests

offenders when necessary, and appears on behalf of the library in any court which may be necessary; maintains records; conducts special investigations as assigned, such as of book stores selling library property; and cooperates with police and school board, social and welfare agency and other officials on cases of truancy, theft, and related offenses.

*Qualifications:* Graduation from an accredited college or university, and at least five years of experience in work requiring extensive contact with the public as a police officer or investigator; or equivalent combination of education and experience.

A good knowledge of municipal ordinances and library regulations, of police and court procedure, of the rules of evidence, and of the relevant aspects of common and statute law; possession of the qualifications for a special policeman's certificate and badge for New Jersey; possession of a driver's license for New Jersey.

Ability to size up situations and people accurately and to adopt quickly an effective course of action.

Good health, better than average physical strength, and freedom from disabling defects; good memory; resourcefulness; courtesy.

The strictly and technically "legal aspects" of this work are fairly obvious, and not too troublesome administratively. The most difficult question, administratively, is to decide when to invoke legal machinery and when not to. This problem has its psychological aspects, and political, diplomatic, and public relations implications as well.

Library boards of trustees frequently have in their membership one or more prominent local attorneys who from time to time generously render real legal service to their boards in the informal discussion of board meetings, and to library employees privately. It is, however, the belief of this writer that such board members should not be imposed upon for free legal services nor should they be employed in their professional capacities by the boards they serve because they would necessarily have a voice in voting upon their own compensation which would not look well no matter how objectively it might be done.

Ordinarily it may be said the city attorney, or corporation counsel, is the library board's official, legal advisor in municipalities, the county attorney for county libraries and the attorney-general for state librarians, except where the state library is in the state education department, when the attorney for that department would usually be consulted. He, in turn, could go to the attorney-general. Even in this matter of who is the librarian's or the library board's official legal advisor both law and practice differ and opinions may conflict. It is wise, and necessary, to follow the opinion of one's official legal advisor

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though that may not always prevent litigation nor assure victory if a suit is brought.

Though many more remain, just one more legal issue in the personnel field will be presented. Are the public library employees in a city where the library is established and run under the aegis of state laws legally city employees? Actually, the answer varies in different jurisdictions. In one state, on this question, the corporation counsels of the two largest cities originally informally rendered directly opposing opinions. Obviously much hinges not only in the exact legal answer to this question, but on what is implied where a Supreme Court has held that the employees of the public library are "in the paid service of the City" and, in the same decision, also "conceded" that the library was properly operated under the general library laws of the state which authorize setting up library boards whose status is at least quasi or semi-autonomous.<sup>15</sup>

Before discussing the published sources for authoritative answers to questions heretofore raised in this chapter, another main topic needs brief discussion although it will be the subject of a separate contribution at the end of this volume, namely: what are the major differences between the legal aspects of problems of publicly-supported libraries and libraries privately supported as separate institutions, or libraries in privately supported, larger institutions such as colleges or universities or businesses?

Obviously, in the privately supported institution the basic set-up of the library's administration, including its personnel administration, will not stem from statutory laws but mainly from privately determined rules and regulations. The authority of the library administrator can be either greater or less than that of his colleague in the tax-supported institutions. Recruiting, selection, appointment, position classification, salary plans, promotion plans and opportunities, retirement pension and annuity provisions, all these may have different procedures and controls. The control of the whole area of labor relations is different. The governing board, if any, the library administrator and library staff member will need legal advice perhaps just as often in the field of private employment as public, but this advice will be based on many different laws which only a qualified legal advisor would know how to apply and interpret.

### BIBLIOGRAPHICAL NOTE

There is no separate bibliography in print covering exclusively the legal aspects of library personnel administration. In fact, there are no substantial dis-

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cussions in print to list! This is a list of publications, some annotated, illustrative of the many types of useful sources in this field. Also included at the end is a brief list of basic, general works which should be known to anyone concerned with the legal aspects of library administration.

*General References*

American Jewish Congress and National Association for the Advancement of Colored People. *Civil Rights in the United States, 1953*. New York, The Congress and N.A.A.C.P., 1954.

Current legislation and court decisions are discussed on pp. 8-11.

*American Jurisprudence*. San Francisco, Bancroft-Whitney Company; Rochester, New York, The Lawyers Co-operative Publishing Company, 1936-.

Current supplement issued regularly. Important source for decisions in cases involving public officers, especially Vol. 42, pp. 875-987, and Vol. 43, pp. 1-259.

*The American Library Annual, 1955-56*. New York, R. R. Bowker Co., 1956.

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This article pays far more attention to the legal aspects involved than do most discussions of library personnel problems.

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Institute for Training in Municipal Administration. *Municipal Personnel Administration*. 4th ed. Chicago, International City Managers Association, 1947.

Joeckel, C. B., ed.: *Current Issues in Library Administration*. (University of Chicago Studies in Library Science) Chicago, University of Chicago Press, 1939.

An unusually well integrated collection of chapters by different authors, with two chapters on personnel, one by G. L. Belsley, then director of the Civil Service Assembly, "The Librarian as a Public Servant"; and the other "Personnel: The Key to Administration," by J. B. Kaiser.

Joeckel, C. B.: *The Government of the American Public Library*. (University of Chicago Studies in Library Science) Chicago, University of Chicago Press, 1935.

Kaiser, J. B.: Civil Service and Libraries. *Library Trends*, 3:80-94, July 1954.

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Kaplan, E. H.: *Law of the Civil Service*. New York, Matthew Bender and Co., 1958.

The author has long been an attorney and executive officer of the National Civil Service League. Announced as the "first complete commentary on Civil Service Law—Federal, State and Local published in this country." It contains notes and citations of the more important civil service cases in all federal and state courts.

Kimbrough, R. T., and Glen, J. B.: *American Law of Veterans*. Rochester, New York, Lawyers Co-operative Publishing Company, 1954.

A comprehensive treatise, completely revised and rewritten by W. E. Shipley. Incidentally reveals that the "Library Fees" of veterans attending either profit or non-profit educational institutions may be paid from government funds allocated veterans.

Korns, W. A. *Unionization of Public Employees*. (Editorial Research Reports, Vol. 2, no. 2) Washington, D.C., July 10, 1957, pp. 505-522.

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Mosher, W. E., et al.: *Public Personnel Administration*. 3d ed. New York, Harper, 1950.

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National Institute of Municipal Law Officers: *Municipalities and the Law in Action*. Washington, D.C., The Institute, 1938.

This annual volume of the National Institute of Municipal Law Officers, now regularly entitled "NIMLO Municipal Law Review" contains the reports of one or more committees concerned with legal problems and court decisions in the area of personnel, both officers and employees.

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