

# MAINE STATE LEGISLATURE

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ATTORNEY GENERAL

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March 21, 1990

Gary Nichols  
State Librarian  
State House Station #64  
Augusta, Maine 04333

Dear Mr. Nichols:

In the context of several discussions we have had recently, you have mentioned that a number of town public libraries in Maine require library patrons to pay a rental fee in order to borrow videocassette tapes. You have asked whether such a practice is permissible under state law. For reasons which are discussed below, the answer to your question is that the practice of charging a rental fee as a precondition for borrowing a videocassette from a public library is not permitted under Maine law.

27 M.R.S.A. § 101 et seq. contains the authority and conditions pursuant to which a town may establish a public library for the use of its inhabitants. Specifically, authority is granted to a town to establish a "free" public library for the "free use" of its inhabitants. Even the most casual reading of this very brief statute reveals that the legislative authority is limited to the creation of a free public library intended for the free use of town residents. The statute is replete with references to "free" public libraries" or "free use of a library". The conclusion that the Legislature intended that the libraries created by towns make lending services available without direct charge to the individuals of the town is inescapable. This is generally understood and accepted by public libraries throughout the State and it is my understanding that none charges a rental fee

for the use of books or other printed material. There is no basis in the law to distinguish books and other printed material on the one hand and videocassettes on the other. Although there is nothing in the law that requires a town library to make videocassettes available to its citizens, in the event that a library chooses to do so, videocassettes must be available freely, on the same basis as books and other printed materials.

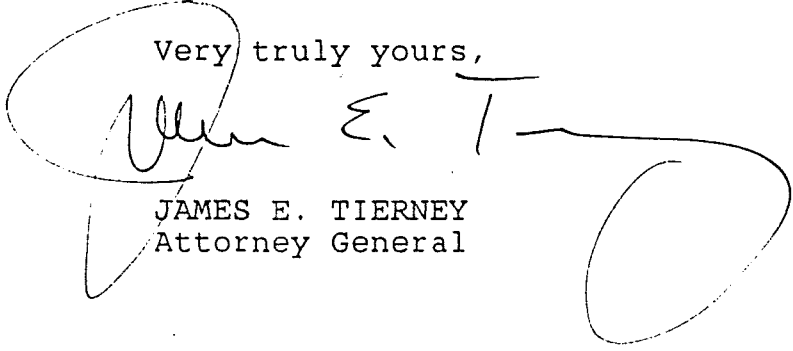
I should note, in passing, that the statutory language of 27 M.R.S.A. § 101 et seq. is old language, most of it in place at least since 1954 with only minor amendments. Obviously, at that time, videocassettes were not available as a medium to disseminate information and entertainment. Books were available and, according to 27 M.R.S.A. § 101, were to be made available to a town's inhabitants without charge. The fact that information and entertainment are now available as a medium not in existence at the time the statute in question was enacted does not undercut the statutory guarantee of "free public libraries" or "free use" of a public library.

Additionally, I should also point out that the free public library guarantee does not prohibit a public library from charging for certain services it provides, such as copying documents or providing computer printouts. The distinction is clear. One borrows a book or videocassette; if one makes a copy of a document, the copy becomes the property of the patron. Furthermore, town libraries may operate under regulations which assess charges for damage or fines for overdue books. The same kinds conditions may be attached to the use of videocassettes without running afoul of the statutory "free use" guarantee.

In conclusion, 27 M.R.S.A. § 101 et seq., the statute which provides authorization for towns to establish public libraries, requires that those libraries be free public libraries available for the free use of all the inhabitants of the town. Therefore, the practice of charging a rental fee as a precondition for borrowing a videocassette is not permitted under Maine law.

I hope this advice is useful to you. Please feel free to contact me if you have any further questions about this matter.

Very truly yours,

  
JAMES E. TIERNEY  
Attorney General

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## CHAPTER 3 PUBLIC LIBRARIES

### Section

101. Free public libraries established in towns.
102. Free public libraries established in village corporations.
103. Free use of library in adjoining towns authorized.
104. Towns uniting for libraries.
105. State aid for municipalities maintaining free public libraries.
106. Libraries controlled by associations assisted by towns.
107. Custody of public documents; list of books purchased.
108. Donation of books and gifts for foundation of library.
109. Gifts and devises to towns.

### § 101. Free public libraries established in towns

Any town may establish a free public library therein for the use of its inhabitants and provide suitable rooms therefor under such regulation for its government as the inhabitants from time to time prescribe, and may levy and assess a tax and make appropriation therefrom for the foundation and commencement of such library and for its maintenance and increase annually. Any town in which there is a public library may establish and maintain under the same general management and control such branches of the same as the convenience and wants of its citizens seem to demand.  
R.S.1954, c. 42, § 29.

#### Cross References

Maine State Library, advice and assistance by, see § 36 of this title.

#### Library References

Towns ⇐35(1);  
C.J.S. Towns § 90 et seq.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### § 102. Free public libraries established in village corporations

Any village corporation located in a town where no free library exists may establish a library within its limits for the free use of all its inhabitants and may levy and assess a corporate tax and make appropriation therefrom for its maintenance and increase annually. Village libraries established under this section shall be subject to all the duties and entitled to all the privileges prescribed by the laws relating to free public libraries in towns.  
R.S.1954, c. 42, § 30.

#### Library References

Municipal Corporations ⇐223.  
C.J.S. Municipal Corporations § 958 et seq.

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### § 103. Free

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27 § 105

§ 103. Free use of library in adjoining towns authorized

Any municipality may raise and appropriate annually a sum of money for the purpose of securing to its inhabitants free use of a library located in an adjoining municipality.

R.S.1954, c. 42, § 31; 1955, c. 185, § 12.

Library References

Municipal Corporations ⇐861.

C.J.S. Municipal Corporations § 1835.

§ 104. Towns uniting for libraries

Two or more towns may unite in establishing and maintaining a free public library with branches thereof in each town for the free use of all the inhabitants of said towns and may each raise and make appropriation for that purpose annually. Such towns shall be subject to all duties and entitled to all the benefits prescribed by the laws relating to free libraries.

R.S.1954, c. 42, § 32.

Cross References

Interlocal cooperation, see title 30, § 1951 et seq.

Library References

Towns ⇐35(1).

C.J.S. Towns § 90 et seq.

§ 105. State aid for municipalities maintaining free public libraries

The officers of any municipality may certify to the State Librarian annually, before the first day of May, the amount of money appropriated and expended by said municipality during the preceding year for the benefit of a free public library established therein, or for the free use of a library in an adjoining town. Upon such certification the State Librarian, if satisfied with the quality of service performed by such library, shall approve for payment to such municipality an amount based on the following schedule:

On appropriations from \$200 to \$475, 10%;

On appropriations from \$476 to \$1,900, 7%;

On appropriations from \$1,901 to \$5,000, 4%.

No municipality shall receive annually less than \$20 nor more than \$200, except as otherwise provided. The state aid money must be spent for the purchase of books to be placed in said library.

If the appropriations of 2 or more towns for the use of the same library in an adjoining town amount to the sum of \$200 or more, the State Librarian may make payment of state aid on the same basis and for the same purpose prescribed above. Such payment shall be made to the municipality where the library is situated.

R.S.1954, c. 42, § 33; 1955, c. 185, § 13.

## 27 § 105

## LIBRARIES, HISTORY AND CULTURE Title 27

### Library References

States  $\S$  114.  
C.J.S. States  $\S$  203 et seq.

### Notes of Decisions

Basis for aid 1 \_\_\_\_\_

which payments shall be made by the State to the town. Atty.Gen.Report 1959-60, p. 41.

#### 1. Basis for aid

The amount of money actually expended by a town for library purposes is the basis upon

### § 106. Libraries controlled by associations assisted by towns

Any town or city in which there is a library owned or controlled by a corporation or association or by trustees may levy and assess a tax and make appropriation therefrom annually to procure from such library the free use of its books for all the inhabitants of the town or city, under such restrictions and regulations as shall insure the safety and good usage of the books. Such library shall then be considered a free public library within the meaning of this chapter and said town or city shall be entitled to the benefits of section 105. R.S.1954, c. 42,  $\S$  34; 1955, c. 185,  $\S$  14.

### Cross References

Corporations without capital stock, see title 13,  $\S$  901 et seq.

### Notes of Decisions

Municipal aid 1 \_\_\_\_\_

#### 1. Municipal aid

A municipality may make a general appropriation to a privately controlled or owned library, so

long as the library upon the assurance of the municipal appropriation, makes its books available on a free basis to the inhabitants, so as to be considered a free public library; the law does not limit the use to which the appropriation may be made. Atty.Gen.Report 1963-64, p. 163.

### § 107. Custody of public documents; list of books purchased

The officers of every free public library, on or before the first day of May of each year, shall send to the librarian of the State Library a report containing a list of all books and documents purchased with the state stipend for the preceding year. The aid from the State, provided by section 105, shall be withheld from any city, town or village corporation until the report required to be made shall have been received by the librarian of the State Library; and the same shall be withheld unless said report shall show that the laws and Maine Reports furnished by the State are kept constantly in said library for the free use and benefit of all the citizens.

R.S.1954, c. 42,  $\S$  35; 1955, c. 185,  $\S$  15.

### § 108. Donation of books and gifts for foundation of library

Whenever a municipality shall purchase books to aid in the establishment of a free public library, the State Librarian shall make a gift of money or new books

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to such library; the gift of a municipality for said purpose. R.S.1954, c. 42,  $\S$  36.

### § 109. Gifts and donations

Any town, as such, for the establishment, may accept by vote of the town thereon, to be used as a library. If any plantation is incorporated, the gift shall fully vest in such town. R.S.1954, c. 42,  $\S$  37.

Towns  $\S$  35(1).  
C.J.S. Towns  $\S$  90 et seq.

Authority to accept 1  
Voters' refusal to accept \_\_\_\_\_

#### 1. Authority to accept

Where testator gave his property to the town for the use of the town and provided that residue of his estate should be kept as a permanent fund and should be used in keeping and purchasing library books and the town as trustee of fund, to the town had authority to receive and dispose of the chattel property disposed of.

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27 § 109

Note 2

to such library; the gift to equal 50% of the value of the books purchased by said municipality for said purpose, and in no instance to exceed \$100.

R.S.1954, c. 42, § 36.

### § 109. Gifts and devises to towns

Any town, as such, may receive, hold and manage devises, bequests or gifts for the establishment, increase or maintenance of a public library therein; and may accept by vote of the legal voters thereof any land or land and buildings thereon, to be used as a public library or art gallery, or both combined. When any plantation is incorporated into a town such gifts and the proceeds thereof fully vest in such town.

R.S.1954, c. 42, § 37.

#### Library References

Towns  $\S$  35(1).

C.J.S. Towns § 90 et seq.

#### Notes of Decisions

Authority to accept 1

Voters' refusal to accept 2

facturers Nat. Bank v. Woodward (1941) 138 Me. 70, 21 A.2d 705.

City of Belfast had authority to take pecuniary and furniture bequests for library reading room. Buzzell v. City of Belfast (1932) 131 Me. 185, 160 A. 21.

#### 1. Authority to accept

Where testator gave house and lot and contents of house to town for use as a public library and provided that residue of estate should be kept as a permanent fund, income of which should be used in keeping the buildings in repair and purchasing library books and named executor as trustee of fund, town under this section had authority to receive in trust either real and chattel property disposed of by the will. Manu-

#### 2. Voters' refusal to accept

Where testator gave house and lot to town for use as a public library if town by vote of voters refused to act as trustee, equity would name a trustee to act in its stead so that trusts intended to be established by testator could be carried into effect according to terms of the will. Manufacturers Nat. Bank v. Woodward (1941) 138 Me. 70, 21 A.2d 705.