

Public Libraries

*Issues and Background for the
Special Committee on State-Tribal Relations
October 16, 2014, Shawano, Wisconsin*

Issue

The treatment of public libraries in state statutes has posed problems for public libraries operated by tribes in Wisconsin. The Department of Public Instruction (DPI) has worked with a number of tribes to try and create ways for public libraries operated by a tribe to be in compliance with state statutes. In spite of these efforts, certain statutory requirements have still resulted in library closures and plans to open libraries to be shelved.

Background

Wisconsin's Public Libraries and the Law

1. The law provides funding for coordinated regional library services.
2. The creation of public library systems fostered the establishment of a strong network of resource sharing and mutually beneficial interdependence.
3. The actual creation and development of public library systems in Wisconsin was a voluntary and gradual process, with Florence County as the last to join a system in 1990. No county or public library is required to be a member of a library system; yet, all of Wisconsin's 72 counties and over 380 public libraries are library system members.
4. In order to belong to a public library system the library board must:
 - a. Be legally established under Chapter 43.
 - b. The municipality establishing the library must approve the library's participation.
 - c. Enter into a written agreement with the system board to participate in the system and its activities.
 - d. Participate in interlibrary loan of materials with other system libraries and to provide, to any resident of the system area, the same library services, on the same terms, that are provided to the residents of the municipality that established the member library.
 - e. Employ a head librarian who is certified as a public librarian by the DPI's Division for Libraries and Technology (Division) and whose employment requires that he or she be present in the library for at least 10 hours of each week.
 - f. Be open to the public an average of at least 20 hours each week.

- g. Expend at least \$2500 per year on library materials.
5. Benefits of membership in the Nicolet Federated Library System include:
 - a. Delivery of materials from other system libraries.
 - b. Inter-Library Loan services for borrowing materials from other libraries.
 - c. E-Resources: databases provided by the system as well as resources in InfoSoup, the shared library network with the Outagamie-Waupaca Library System (OWLS).
 - d. Access to the Wisconsin Public Library Consortium e-books and downloadable audiobooks, one of the largest Overdrive collections in the country.
 - e. Access to grants provided by the System or awarded to the System by the DPI.
 - f. Training, continuing education, and consulting services.
 - g. Participation in the InfoSoup library automation system, hosted by OWLS (the Keshena library belonged to InfoSoup, but when the library closed the college elected to operate under its own library automation)
 6. In order to be considered a public library, there are certain requirements the municipality and library must meet:
 - a. Obtain an opinion on feasibility and desirability of establishing the public library from the Division of Libraries and Technology (DLT)
 - b. Appoint a board (in this case 5 members), including a school district administrator or designee. No more than one member of the municipal governing body may be appointed to the board.
 - c. The board must have exclusive control of the library fund, appoint a library director with the proper certification, and establish reasonable policies for the operation of the public library.
 - d. Complete an annual report due to the Division no later than 60 days after the end of the year.

Public Libraries Operated by Tribes

7. Tribal libraries were not eligible for membership in public library systems, until 1979 Assembly Bill 20 added the phrase "tribal government or tribal association" to the definition of "municipality" in s. 43.001(4).
8. The requirements of current statutes that have been difficult for tribes to meet include:
 - a. Maintaining a legal library board, holding regular meetings to provide oversight of the library administration and expenditures from the library fund.
 - b. Retaining library directors who can complete and maintain their library director certification.
9. There are currently only four other public libraries operated by tribes in Wisconsin.
 - Bad River Public Tribal Library
 - Lac Courte Oreilles Ojibwa (LCO) College Community Library
 - Ben Guthrie--Lac du Flambeau Public Library

- Oneida Community Library

10. Two tribal libraries have closed. They are libraries in Red Cliff (2005) and Keshena (2012).
11. There have been efforts to reestablish a library by the Red Cliff Band of Lake Superior Chippewa.

Recent Issues - Keshena and the College of the Menominee Nation

12. In 2012, the public library in Keshena, Wisconsin was closed in Menominee County, and all materials were turned over to the College of the Menominee Nation (CMN). Some of those materials were integrated into the CMN library collection; others discarded. The College signed a memo-of-understanding (MOU) with the tribe to provide library service to residents of the tribe and other residents of Menominee County.
13. 2013 Public library and system annual reports to DPI confirmed that there is no legal public library operating in Menominee County, and the county has not been in compliance for membership in the NFLS under s. 43.15(4)(b).
14. Communication was made with the NFLS director and the CMN library concerning noncompliance as well as an attorney for the Menominee Nation in January and February 2014.
15. In July 2014 the DPI's Division for Libraries and Technology issued letters of noncompliance to both Menominee County and the NFLS Board. The following are required to address non-compliance under current state law:
 - a. NFLS: A plan needs to be created with the division for the County to come into compliance or state aid will be withheld.
 - b. Menominee County
 - i. County must conduct a formal library planning process as required under s. 43.11.
 - ii. The plan must:
 1. provide for library services to residents of those municipalities in the county not maintaining a public library;
 2. include full access to public libraries participating in the public library system;
 3. provide for public library service, which may be provided by contracting with existing public libraries in adjacent counties or by the public library system or by creating a county library organization under this chapter [s. 43.11(3)(c)]; and
 4. provide for payments to libraries for that access [s. 43.12].
16. The NFLS director and John DeBacher, Director of Public Library Development at the DPI, met with the college president, the library director, members of the tribe, other

college administrative personnel, and the county administrator on August 21, 2014. DPI outlined various options for the tribe or the county to establish a public library to be operated at the college (a similar situation exists at the LCO Community College Library, where a public library is operated).

17. Options available under current statutes that were outlined at the August 21 meeting included:

- a. *Do nothing*: Continue as a college library that, in addition to providing library services to college students, also serves residents of the reservation and tribe. The library can also be identified in the county plan as providing those services, but the county plan would also have to define how access to other libraries in the system would be provided and how libraries in adjacent counties would be compensated for use by residents of the county.
- b. *Tribal Public Library*: The Tribe would establish a public library to be operated in conjunction with the College library, under s. 43.52(1).¹ After consultation with the DPI, the Tribe would appoint a five-member board under s. 43.54(1)(a), with no more than one representative from the tribal governing body at any one time being a member of that board, and one of the members must be a school district administrator or designee, to represent the public school district in which the library is located (the Tribe would not be precluded from appointing college staff or faculty to the board). The library board must then have the powers and duties outlined in s. 43.58, including exclusive control of funds appropriated or donated for the public library, appointment of a library director, and preparation and submission of an annual report to the Division. The library would also need to meet the requirements of s. 43.14(4)(c) to participate in the Nicolet Federated Library System.
- c. *Town Library*: The Town of Menominee could establish a library, similar to the process above, except the town would need to obtain permission from the county under s. 43.52(1m). The monetary resources needed for this option to succeed may be prohibitive.
- d. *County Library*: Menominee County could establish a consolidated county library under s. 43.57(1)(a). It would require appointment of a 7-member board and be operated by the county. Because the county does not provide the funding in the current circumstance, and because of the larger board and fiscal duties, this likely is not an option.

18. At the August 21 meeting, College of the Menominee Nation President Dr. Verna Fowler expressed concern that a separate public library board would result in less control of the

¹ Two types of libraries being operated in one facility is known as a "co-located" library. Because the only example of a public library being operated within a college library is at LCO, we do not have documentation of that type. But there are a number of school co-located libraries. We have a document on school/public issues that is posted as a PDF, with updated information on our site here: http://pld.dpi.wi.gov/pld_comblibs. Some of the issues and considerations may be relevant to co-locating services at the college library.

college library and that they had sufficient controls in their MOU.

19. Under current statutes the tribal college may be able to be identified as a municipality. While this would allow the tribal college to establish a library as a municipality and would solve the immediate desire for the college to operate a public library that could get full services from the NFLS, there are other problems that still remain:
 - a. Considering the college as the “municipality” that operates the library creates questions surrounding the county’s responsibility to make payments to libraries in adjacent counties for service under s. 43.12. The statute requires the county to make payments for “loans of materials ...to residents of the county who are not residents of a municipality that maintains a public library....” Are “residents” to be only those who reside at the college, on the college grounds? Are they the registered college students? Or should it be interpreted in this case that the college serves the full reservation, so that nearly the entire county is exempt from payments to Shawano and other libraries in adjacent counties?
 - b. If the College library is a “public library,” then it is also entitled to payments under s. 43.12. There is currently no way currently for the college to distinguish what part of its operations are “public library” and what are “college library.” Should the CMN be able to charge for loans of materials to registered students who reside in other counties? In co-located libraries, the public library expenditures and collection purchases are tracked separately from the expenditures of school funds for collection and staff.
 - c. Payments to adjacent counties: In the case of Menominee County, if the reservation is considered the territory of the library, then the county must be able to identify those parcels that are privately owned and subject to property tax (their addresses, too). If any are private residents or rentals, then the use of libraries in adjacent counties (eg Shawano) by those residents would be subject to payments by Menominee County under s. 43.12.
 - d. Municipalities also have to be the fiscal agent for the library. They hold the funds and only pay bills upon authorization of the library board. The municipality has boundaries and the property is subject to the county tax, including the county library tax, unless the municipality specifically exempts from the county tax under s. 43.64. Reservation lands, however, are not subject to property tax.

Alternatives

1. Remove “tribal government or tribal association” from the definition of municipalities and create in statute a new type of public library, the “tribal public library” as having the same requirements for library system membership under s. 43.15(4)(c), except that the separate library board would be an option, not a requirement. If a separate board is not established, the tribe is required to address key requirements of public library boards such as oversight of the public library fund, expenditures, and operations [s. 43.58(1), (2), &(4)]; compiling and submitting an annual report to the DPI [s. 43.58(6)]; setting policies [s. 43.52(2)]; and accepting and controlling donations to the public library [s.

43.58(7)].

2. Pursue a statutory change to add tribal college as meeting the definition of a municipality. This alternative, however, would create numerous issues that would need to be resolved surrounding:
 - a. Definition of resident.
 - b. Payments to adjacent counties.
 - c. Charging college students (their primary "patron")
 - d. Application of statutes related to felonies for loaned material.
 - e. Implications of identifying a tribal college as a municipality in statute including payment and taxation questions related to funding public libraries.
3. Keep current statutes.

Recommendation

Alternative 1.