

Legal Q&A

By **Heather M. Lockhart**, TML Assistant General Counsel

Q. Are cities required to fund and operate a local library?

A. No. There is no state law requirement that a city have a library.

Q. What is a library district?

A. A library district is a political subdivision created to establish, equip, and maintain public libraries for the dissemination of information relating to the arts, sciences, and literature. TEX. LOC. GOV'T CODE §§ 326.002 & 326.004.

Q. How is a library district created?

A. Before a district may be created, the commissioners court of the county that the proposed district will be located in must receive a petition signed by at least five percent of the number of voters who voted in the most recent gubernatorial election who live in the territory of the proposed district. TEX. LOC. GOV'T CODE § 326.023. After receiving the petition, the commissioners court is required to call an election on the question of whether to create a library district. The library district must be approved by a majority of the qualified voters of the district. TEX. LOC. GOV'T CODE § 326.021.

Q. Can a city be included in the territory of a library district?

A. Yes. However, if the boundaries of the proposed district include any territory that is part of a city that operates a public library, then the city council must consent by resolution to allow the city to be included in the proposed library district. TEX. LOC. GOV'T CODE § 326.022. After a library district is created, the district may not be expanded to include additional territory unless an election is held to approve the expansion of the district.

Q. Can a library district impose a sales tax?

A. Yes. A library district may impose a sales tax, if the tax is approved by a majority of the voters. TEX. LOC. GOV'T CODE § 326.021. The permissible rates for a local sales and use tax are one-eighth of one percent, one-fourth of one percent, three-eighths of one percent, and one-half of one percent. TEX. LOC. GOV'T CODE § 326.093. Taxes collected may only be used for the “purposes for the dissemination of general information relating to the arts, sciences, and literature.” Taxes may also be pledged as collateral for borrowing money to further those same purposes.

Q. What if my city that is in a proposed library district has already reached its maximum sales tax cap of two percent?

A. The combined rate of all local sales and use taxes imposed by political subdivisions, which includes a library district, may not exceed two percent. Thus, a district may adopt a sales tax only

if as a result of the adoption, the combined rate of all local sales and use taxes in the district will not exceed two percent. TEX. LOC. GOV'T CODE § 326.096.

Q. May the city prohibit library patrons from carrying a concealed handgun by a person who is licensed to carry?

A. Generally, no. If the library is owned by the city, the city cannot prohibit open or concealed carry of a gun in the library by license holder. However, if an activity sponsored by a school or educational institution is being held at the library, then carrying an open or concealed weapon would be prohibited. TEX. PENAL CODE § 46.03. Additionally, if a body subject to the Open Meetings Act is meeting in a meeting room in the library, then open or concealed carry may be prohibited, if the entity provides the proper notice. TEX. PENAL CODE § 46.035(c).

Q. Must a city follow procurement requirements for the purchase of library materials?

A. Generally yes, but chapter 252 of the Local Government Code provides an exemption from the procurement requirements when the purchase is of rare books, papers, and other library materials for a public library. TEX. LOC. GOV'T CODE § 252.022(8). A city should also follow any local policies that have been adopted regarding purchasing.

Q. What is the Children's Internet Protection Act?

A. The Children's Internet Protection Act (CIPA) was adopted by the federal government in 2001 to address concerns about children's access to obscene or harmful content over the Internet. Libraries subject to CIPA may not receive the discounts offered by the E-rate program (*the federal E-rate program provides discounted telecommunications, Internet access, and internal connections to eligible libraries*) unless they certify they have an Internet safety policy that includes technology protection measures. The protection measures must block or filter Internet access to pictures that are: (a) obscene; (b) child pornography; or (c) harmful to minors. Before adopting an Internet safety policy, libraries must provide reasonable notice and hold at least one public hearing or meeting to address the proposal.

Q. Can a city library charge a non-city resident a higher fee for a library card?

A. Maybe. Fees, such as a charge for a library card, should return to a city only what it costs to run the program. When fees are in excess of the amount needed for regulation, they are referred to as "unauthorized occupation taxes." For home rule cities, the Texas Constitution provides that "cities may levy, assess, and collect such taxes as may be authorized by law or by their charters" but "no tax for any purpose" shall exceed two-and-a-half percent of the taxable property of the city (effectively \$2.50 for each \$100 worth of value). TEX. CONST. ART. 11 SEC. 5.

Fees that generate revenue in excess of what a city needs to operate the program for which the fee is charged can be found by a court to be unauthorized taxes. For home rule cities, if a fee bears a reasonable relationship to the cost of providing the service and there is no legal prohibition against charging the fee, generally, the city can charge the fee. For general law cities, a fee must bear a reasonable relationship to the cost of providing the service, and there must be

authority to levy the fee. See, e.g., *Vance v. Town of Pleasanton*, 261 S.W. 457, 458 (Tex. Civ. App. – San Antonio 1924 aff'd Comm'n of Appeals of Texas, Section A, 277 S.W. 89, 1925).

Cities may take into account the cost of providing library services to cardholders not paying city property taxes when imposing a fee for non-residents. You should consult with your local legal counsel if your city is considering a fee for non-residents to use your city library services.

Q. Must a city allow religious groups to use a city library for meetings?

A. If the city allows a library to be used by a non-religious group, then the city must allow a religious group to use the property on the same, or similar, conditions as the non-religious group. Because a library is generally considered a public forum, the city will face strict scrutiny under the First Amendment in attempting to bar use by religious groups or imposing substantially different conditions on library use. *Good News Club v. Milford*, 533 U.S. 98 (2001). See also *Lamb's Chapel v. Center Moriches School Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Concerned Women for America, Inc. v. Lafayette County*, 883 F.2d 32 (5th Cir. 1989).

Q. Must a city library comply with the Americans with Disabilities Act?

A. Yes. A library must comply with Americans with Disabilities Act (ADA) Standards regarding accessibility. The federal government has provided two handbooks to assist cities with this task: ADA Compliance Guide for Small Towns (www.ada.gov/smtown.htm) and Technical Manual for Local Governments (www.ada.gov/taman2.html).

Q. May we randomly drug test library employees?

A. No. A library employee is not considered to be a safety-sensitive position. Thus, the Fourth Amendment would prohibit suspicionless drug testing of library employees. *Lanier v. City of Woodburn*, 518 F.3d 1147 (9th Cir. 2008).

Q. What is a “little free library?”

A. A “little free library” is a structure that provides a place for books to be exchanged for free. In 2009, Todd Bol of Hudson, Wisconsin, built the first of these libraries: a model of a one room schoolhouse. Designed as a tribute for his mother who loved to read, Bol filled the structure with books and put it on a post in his front yard. His neighbors and friends loved it, so he built several more and gave them away. The History of Little Free Library, <https://littlefreelibrary.org/ourhistory/>.

Q. How are little free libraries regulated?

A. State law does not govern these structures. Some cities in the United States have enacted zoning regulations on where these structures can be located. However, there are no cities in Texas that currently regulate these structures.

Q. Where can I find more information?

A.

- The Texas Municipal Library Directors Association: <http://tmlda.org/>
- Texas Library Association: <http://www.txla.org/>
- Texas Public Library Standards: <https://www.tsl.texas.gov/plstandards/index.html>
- Grants available through the Texas State Library and Archives Commission: <https://www.tsl.texas.gov/landing/libfunds.html>