

MINUTES

CEDAR SPRINGS PUBLIC LIBRARY REGULAR BOARD MEETING

**MONDAY
SEPTEMBER 25, 2023**

7:00 PM MEETING

**CEDAR SPRINGS PUBLIC LIBRARY
107 N Main Street, Cedar Springs, MI 49319**

Cedar Springs Public Library Mission Statement

The mission of the Cedar Springs Public Library is to provide quality materials and services to educate, inform, teach, and partner with our diverse community in an atmosphere that is welcoming and promotes lifelong learning.

I. CALL TO ORDER

Meeting called to order by Secretary Owen.

Present: Tony Owen, John Lehmoine, Tim Smith, Mark Dykstra, Heidi Armock

Absent: AJ Anielski, Maryevelyn Vu,

Quorum present

II. PLEDGE OF ALLEGIANCE

Pledge was led by Secretary

Secretary turned meeting over to Vice Chair Smith

III. PUBLIC FORUM

Any citizen who wishes to address the Library Board on a topic shall be recognized by the Chair and limit their comments to two minutes unless the chairperson deems otherwise. The Board will not respond to, or discuss, public comments unless the Chair approves. (Comments are not verbatim)

Connie voiced concern a contract had not been signed yet

No other oral or written comments

IV. APPROVAL OF THE AGENDA

MOTION: "Approve agenda" made by Owen, second by Lehmoine

Motion carried by voice vote Ayes 5, Nays 0.

V. CONSENT AGENDA

A. Approval and affirming of August 28, 2023, meeting minutes

B. Approval of August 2023 Financial report

MOTION: "Approve Consent Agenda" made by Owen, second by Armock

Motion carried by voice vote Ayes 5, Nays 0.

VI DIRECTOR'S REPORT

Armock or ranking staff member to present a report
Asst Director Laura Parks provided report to Board
Statistical Report is due to be started Oct 1 and turned into the State of Michigan by Feb 1, 2024. IT is coming in to access the past directors laptop. Board indicated Parks should reach out to Lakland for assistance. Past Director Clark offered to be a resource. This report is due for state aid. If not completed the library will be fined.
Requested Board authorization to continue setting up programs for new year. Board approved
Lakeland indicated the library must get its own domain for emails. Board Approved the cost and seeking help in setting up domain for email.
Board directed Parks to inform Lakeland to put a hold on canceling Solon Twp library cards set for October 13, 2023.

VI. UNFINISHED BUSINESS

- A. Discussion of Staff statement to Public
Dykstra will provide Parks with an infographic to post and put on library website concerning status of Library.
- B. Approve payment to attorney
Armock stated this check is in the process of being paid.

VIII NEW BUSINESS

- A. Approval of Contracts
All contracts should carry through the possible changing of the Board.

IX. COMMITTEE REPORTS

- A. Personnel Committee – None
- B. Policy Committee – None
- C. Bylaw Committee – None
- D. Technology Committee – None
- E. Finance Committee – None

X AGENDA ITEMS FOR MONDAY OCTOBER 23, 2023, MEETING

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XI. BOARD COMMENT

Armock requested that anyone who needs to talk with Laura do it outside
Owen state aid is important. Next meeting should be 10/23/23 unless otherwise posted. Handouts for 3 years ending balance sheets were provided.
Lehmoe asked everyone to continue working towards an agreement
Dykstra state donations should be spent for the events not part of the budget.

XII ADJOURNMENT

Vice Chair adjourned the meeting at 7:25 pm
Next regular meeting scheduled for Monday, October 23, 2023, 7:00 pm at the library.
Submitted by Secretary Owen *LO*
Approved by the Board on *10/23/23*

Attachments

Memo from L of M: Legal establishment of the Cedar Springs Public Library

The research and resources above are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

Information regarding the establishment of the Cedar Springs Library, the authority of the board, the role of the municipality (the city of Cedar Springs), funding requirements for service contracts with Solon Township, or other municipalities, and the impact of a branch contract with KDL.

By Clare Membiela, Library of Michigan Library of Michigan Library Law
Consultant

Legal Establishment of the Cedar Springs Public Library

Cedar Springs Public Library, like many Michigan public libraries, has a long and complex history. Attached is a complete explanation of the library's establishment history. For purposes of this memo, I will start with the contract for library services under sections 13 and 15 of The City, Village and Township Libraries Act (PA 164), 1877 PA 164, MCL 397.201 et seq., (MCL 397.213; MCL 397.215)

Prior to this contract, the Cedar Springs Public Library was a city library under section 1 of PA 164 (MCL 397.201). This type of library is one established via charter or ordinance section, with an appointed 5,7-,or 9-member governing board having all the authorities and powers outlined in section 5 of the act (MCL 397.205). Although a section 1 city library is largely independent, and the governing board provides the governance and operational authority for the library, the city, through the ordinances or charter sections creating the library, may add provisions that increase the city's involvement in some area of library organization or operations. However, a charter or ordinance section may not contradict or remove any powers or authorities provided by section 5 of the act.

Once the contract with Solon Township was signed, that contract changed the establishment , or, reestablished the library from a section 1 city library to a section 15 Joint Board Library. A joint board library under PA 164 has a governing

board with the powers enumerated in section 5 of the act and changes the board configuration from only Cedar Springs residents to a combination of Cedar Springs and Solon Township. At this point the library is no longer a city section 1 library.

The city and township have limited input for library governance . The funds of the library sit in the city treasury, but the library board has sole authority over the finances and budget. The city merely holds the funds and disburses amounts as approved by the library board.

This is the establishment the Library of Michigan currently identifies with the Cedar Springs Public Library – A Section 1 City Joint Board Library with Solon Township under sections 1, 13 and 15 of 1877 PA 164

If the city terminates the Joint board contract with Solon Township, and reverts itself back to a City Library under section 1 of 1877 PA 164, then contracts with Solon Township for services:

The ONLY legal way Cedar Springs can give board seats to Solon Township is through becoming a Joint Board Library under sections 13 & 15 of 1877 PA 164.

A section 1 City Library under 1877 PA 164 cannot change its board configuration to something other than what is permitted by the statute – the statute calls for a 5, 7-, or 9-member city appointed board , with members chosen by the mayor (with approval of city council) from the “citizens at large.” The statute does not give authority for the city to delegate board members to another municipality as part of a contract.

In addition, the Library of Michigan needs notification of any change in the establishment of the library (from joint board to city section 1 and/or new joint board agreement), including a copy of the signed agreement.

The Authority and Powers of the Library Board

As a Joint Board Library under 1877 PA 164, the governing board has the same authority and powers listed in section 5 of the act (MCL 397.205). These are the same as the board has as a City section 1 library and include;

- Exclusive control of library funds (expenditures) including creation, approval and management of the budget.

- Operational control- authority to determine and approve library operational policies and procedures (include bylaws – the city should not be writing library governing board bylaws)
- Property control – Can own, lease, or build property.
- Can hire, terminate, and manage employees- especially the library director.

In short, a pa 164 library board has broad powers separate from the municipality that established it.

In reviewing the language of section 5, one can see that the legislature made some powers and authorities firmly within the board's purview by use of the words "has" and "shall." For example:

"The governing board shall make and adopt bylaws, rules, and regulations for its own guidance and for the government of the library and reading room, consistent with this act." The governing board has exclusive control of the expenditure of all money collected to the credit of the library fund, the construction of any library building, and the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose. All money received for the library shall be deposited in the treasury of the city to the credit of the library fund, shall be kept separate and apart from other money of the city, and drawn upon by the proper officers of the city upon the properly authenticated vouchers of the library board. MCL 397.205

This allocation of authority by the legislature indicates that the library board's role is that of the legal authority for the library – with the legal power and authority to contract on behalf of the library, and the legal ability to determine the library's policies and procedures

For example -the City of Cedar Springs should not write the bylaws of the Cedar Springs Public Library without the approval of the library board. The law is clear that the board "shall" write its own bylaws.

The authority of a PA 164 board has been well established in Michigan law:

- **Bostedor v. City of Eaton Rapids**, 273 Mich. 426 (1935) ("It was evidently the purpose of the Legislature in authorizing and regulating such libraries by general law to remove the same from politics and factional disturbance.")

- **Benton Harbor Library Board v. City of Benton Harbor**, 90 Mich. App. 62 (1980) (Court of Appeals affirmed lower court ruling that section 1 library under 1877 PA 164 was an “independent body)
- **Mich AG Op. No 6924, 12/4/1996.** (*city library under PA 164 has control over budget- City cannot require approval of city*)<https://www.aq.state.mi.us/opinion/datafiles/1990s/op06924.htm>

The role of the City of Cedar Springs in the Library:

Under Michigan laws, public libraries are established by municipalities, then, for most establishment types, the laws intend for the library to be separate from the city. However, for a PA 164 section 1 city library, the municipality generally has a bit more authority over certain aspects of the library:

- Appointment of board members according to charter or ordinance section, or Joint Board contract.
- Authority and sole discretion each year to levy up to 1 mil of ad valorem tax without a vote (however, how the library allocates or budgets that money is up to the board).
- Authority, through charter or ordinance sections establishing library, to make some decisions on some board authority concerning status and hiring of library employees, and the authority of the board over library buildings.
- The library funds are maintained in the city treasury, so the city has authority over the maintenance and disbursement of those funds, including the related financial policies and procedures (not including the authority over how the funds are allocated, budgeted or spent).
- The city, under section 15 of 1877 PA 164 has the authority to contract with another municipality to establish a joint board library. In turn, the city also has the authority to terminate said contract (according to the language of that contract).
- The city has the authority to close and /or re-establish the library.

In sum, although a city has a bit more input in a PA 164 section 1 library, a city does not have organizational control to make decisions and usurp statutorily

bestowed authority of the legally appointed board. Ideally, both the city and the board should work together while respecting the authority each has regarding the library. Michigan courts have found that 1877 PA 164 libraries are “independent bodies,” (*Benton Harbor Library Bd. V City of Benton Harbor*, 99 Mich.App. 62 (1980)) (Court below ruled board was independent body, Court of appeals affirmed) (attached) and “*It was evidently the purpose of the Legislature in authorizing and regulating such libraries by general law to remove the same from politics and factional disturbance ...*” *Bostedor v. City of Eaton Rapids*, 273 Mich. 426 (1935) (attached). The Michigan Attorney General has determined that a city may not require a PA 164 board to submit the library budget for review or amendment by the city council. The library board is specifically empowered by 1877 PA 164, section 5 (MCL 397.205) with “exclusive control” over library expenditures, including the library budget, “*the library board of directors has the authority to determine the final annual budget of a city library established under 1877 PA 164...*” Mich AG Op. No 6924, 12/4/1996.
<https://www.ag.state.mi.us/opinion/datafiles/1990s/op06924.htm>

Funding Requirements for Service Contracts or Joint Board Contracts

In Michigan all library establishment types are intended to be funded locally, by the communities the libraries serve. While the Michigan Constitution allocates penal fines (fines received because of violations of the state criminal and traffic codes), it is well established that penal fines have never (since their inclusion in the first Michigan Constitution) been intended to be the sole source of library funding – for any kind of library service.

State Aid to Libraries has been another long-standing supplemental funding program for public libraries. The most recent iteration of this program is the current State Aid to Public Libraries Act, , MCL 397. . This program provides funding for cooperative libraries as well as for public libraries that meet the requirements of the act:

- Receipt of 3/10 of a mil of local support (“local support” can be millages, appropriations, penal fines, or donations to the library from the communities they serve).
- Certification of library director and staff in compliance with the Library of Michigan certification standards.

- Completion of the Annual Report/State Aid application between October 1 and February 1 of each year.

Most public libraries are funded via a voted (or unvoted as in the case of PA 164 section 1 libraries) millage, or via municipal appropriations. A public library's specific establishment law will indicate if a voted dedicated millage is authorized, as well as the limits of any millage. Many establishment types require a millage as part of establishment. However, a PA 164 section 1 library does not require a millage- the municipality MAY levy up to 1 mil unvoted, and an additional 1 mil can be raised via a voted millage, for a total of 2 mils of tax funding. (MCL 397.201 <http://legislature.mi.gov/doc.aspx?mcl-397-201>) A Joint board library is also authorized to have 2 mils of total tax funding. MCL 397.215 authorizes a municipality contracting with a PA 164 library under sections 13 & 15 of 1877 PA 164 to levy up to 2 mils of a voted millage. However, such a millage is not required <http://legislature.mi.gov/doc.aspx?mcl-397-213> .

There is a question as to whether a millage is required of Solon Township as a contracted municipality:

There is no legal requirement for a millage. HOWEVER, there is a requirement that Solon Township pay fair market value for the services offered by Cedar Springs.

No contract is valid or legal if it does not include consideration in return for the offer of goods or services. If Solon Township wished to have library services, they must pay fair market value to the library for those services. "Fair Market Value" would generally be calculated according to:

- The costs incurred by Cedar Springs Public Library to provide the service (as represented by a per capita or per household cost determined by dividing the library's budget by the population of the city). The fair market value would be that per capita x the population of the contracting municipality.
- OR
- The amount of support paid by the residents of Cedar Springs to operate the library (as represented by a per-capita or per- household payment

determined by dividing the total millage amount received by the population of the city). The fair market value would be the per capita x the population of the contracting municipality.

OR

- 3/10 of a mil of local support calculated according to the contracting municipality's taxable value.

The 3/10 of a mil is the amount required to be received by Cedar Springs library from a contracting municipality in order for Cedar Springs Library to receive State Aid monies for the population of the contracting municipality. This is a statutory amount required by the State Aid to Public Libraries Act, section (). While this amount is frequently NOT equal to the cost of providing service, OR the costs paid by a legal service area (the population served by a library as a consequence of establishment – ie the city population of a city library), the fact that the legislature considers it fair market value for purposes of proof of community support of a library makes it the LEAST amount a contract should require.

HOWEVER, it should also be noted that if the 3/10 of a mil option is chosen for consideration in the contract and the operational costs of the library or the millage paid by the residents of Cedar Springs is higher than the 3/10 of a mil paid by Solon, then the residents of the city of Cedar Springs will be paying towards the costs of service for Solon Township. IN other words, the failure of Cedar Springs to require a fair payment by Solon Township will mean that the residents of Cedar Springs will be subsidizing the services to Solon Township – you will have people paying different amounts for the same services - and that is not something residents typically appreciate.

So, while a millage, per se is not required, equal payment certainly is. How that payment is made – whether through a millage, or through payment by the contracting municipality from other funds (such as from the municipality's general fund, etc.) is between the contracting parties.

Effect of a Contract with KDL From an Establishment Perspective.

- A branch contract with KDL is a major establishment change – it is not the library contracting as the library. It is the city delegating operations and governance of the library to KDL. It is merging the library with KDL.
- A contract with KDL which makes Cedar Springs a branch of KDL would strip Cedar Springs of its legal establishment and its independent library status. Cedar Springs would be considered a legal part of KDL. The Library of Michigan would no longer consider Cedar Springs as a City Library under section 1 of 1877 PA 164 or a Joint Library. The city will no longer have jurisdiction over the library except as indicated in the branch contract.
- Cedar Springs Public Library will be included within KDL's Annual Report and State Aid Application – Cedar Springs will no longer complete their own.
- Cedar Springs Public Library would no longer have a governing board and any "board" that is subsequently appointed under a contract with KDL will not be considered the governing board of the library. The board of KDL will be considered the governing board of the Cedar Springs Public Library.
- Any funds, including Penal Fines and State Aid that is available for the population of Cedar Springs will be paid to KDL.
- Solon Township will have to contract directly with KDL for services provided by Cedar Springs Public Library.
- All financial aspects of the library , including budgeting, will come under the authority and purview of KDL, or as determined by the language of the contract signed between KDL and Cedar Springs.

In Sum:

- Cedar Springs is a Joint Board City Library under sections 1,13 & 15 of 1877 PA 164 with Solon Township.
- Termination of the existing joint board contract and reinstatement of Cedar Springs as a City library under section 1 of 1877 PA 164 with a 5, 7 , or 9 member appointed board. This reinstatement requires a city council resolution because of the establishment change.
- Library board and city official fiduciary duty dictate that a contract with Solon Township for service includes consideration of fair market value for library services. That consideration should be for no less than 3/10 of a mil of taxable value of Solon Township, but ideally would equal the amount

paid per capita by Cedar City residents for library services. Payment of less than 3/10 of a mil would threaten state aid eligibility and could create problems with the library's cooperative.

- The consideration for services under a contract for service is not required to be a millage.
- A contract for services with Solon Township can **NOT** include the provision of board seats to Solon Township unless the contract is for a Joint Board library under sections 13 and 15 of 1877 PA 164.
- A branch contract with KDL will remove Cedar Springs Public Library's independent legal establishment. By definition, Cedar Springs will be a branch of KDL and no longer an independently established library. The operation of the library and control of its funds will be under the control and governance of KDL in accordance with the contract between Cedar Springs and KDL. Cedar Springs Public Library will no longer have a governing board.
- The library is a distinct entity established under an existing state law that governs many aspects of the library's administration and authority, including its status as a legal organization. Changes to the library's governance and organization should be made in coordination with the applicable establishment law to avoid any unintended legal and organizational problems.
- The Library of Michigan must be notified of changes made to a service contract (including a joint board contract), or establishment in order to avoid incorrect penal fine and state aid payments, and cooperative payment issues. Any penal fine or state aid payment errors may require the library to repay any monies paid for populations no longer served because of a contract change that was unreported to the Library of Michigan.

9/8/2023

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