

TITLE XVI LIBRARIES

CHAPTER 202-A PUBLIC LIBRARIES

Section 202-A:1

202-A:1 Declaration of Policy. – Mindful that, as the constitution declares, "knowledge and learning, generally diffused through a community" are "essential to the preservation of a free government" the legislature recognizes its duty to encourage the people of New Hampshire to extend their education during and beyond the years of formal education. To this end, it hereby declares that the public library is a valuable supplement to the formal system of free public education and as such deserves adequate financial support from government at all levels.

Source. 1963, 46:1, eff. July 1, 1963.

Section 202-A:2

202-A:2 Definitions. – As used in this chapter the following words shall be construed as follows unless the context clearly requires otherwise:

I. "Public library" shall mean every library which receives regular financial support, at least annually, from public or private sources and which provides regular and currently useful library service to the public without charge. The words may be construed to include reference and circulating libraries, reading rooms and museums regularly open to the public.

II. "Library trustees" shall mean the governing board of a public library.

Source. 1891, 62:3, 4, 5. 1917, 59:1. PL 10:50. RL 15:50. RSA 202:1. 1963, 46:1, eff. July 1, 1963.

Section 202-A:3

202-A:3 Establishment. – Any town may establish a public library by majority vote at any duly warned town meeting. Any town may vote in the same manner to accept a public library which has been provided, in whole or in part, by private donation or bequest and may accept any bequest, devise or donation for the establishment, maintenance and support of such a library. The powers herein granted to a town may be exercised by a city by vote of the city council.

Source. 1963, 46:1, eff. July 1, 1963.

Section 202-A:4

202-A:4 Maintenance. – Any city or town having a public library shall annually raise and appropriate a sum of money sufficient to provide and maintain adequate public library service therein or to supplement funds otherwise provided.

Source. 1895, 118:1-8. 1917, 59:1. PL 10:51. 1927, 82:2. 1933, 60:1. RL 15:51. RSA 202:2. 1963, 46:1, eff. July 1, 1963.

Section 202-A:4-a

202-A:4-a Cooperatives. – Any public library may join library cooperatives consisting of public libraries, or of public and other than public libraries including school, college and university, and special libraries. Towns are authorized to raise and appropriate sufficient money for participation in cooperatives.

Source. 1981, 499:4, eff. Aug. 28, 1981.

Section 202-A:4-b

202-A:4-b Contracts for Services. – Any town may contract with another town or city, or with an institution or other organization, for any library service. If a town meeting votes to enter into such a contract, the town shall raise and appropriate sufficient money to carry out the contract.

Source. 1981, 499:4, eff. Aug. 28, 1981.

Section 202-A:4-c

202-A:4-c Trustees' Authority to Accept and Expend Gifts. –

I. Notwithstanding any other provision of law to the contrary, any town at an annual meeting may adopt an article authorizing indefinitely until specific rescission of such authority, the public library trustees to apply for, accept and expend, without further action by the town meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year. The following shall apply:

(a) Such warrant article to be voted on shall read: ""Shall the town accept the provisions of RSA 202-A:4-c providing that any town at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the public library trustees to apply for, accept and expend, without further action by the town meeting, unanticipated money from a state, federal or other governmental unit or a private source which becomes available during the fiscal year?""

(b) If a majority of voters voting on the question vote in the affirmative, the proposed warrant article shall be in effect in accordance with the terms of the article until such time as the town meeting votes to rescind its vote.

II. Such money shall be used only for legal purposes for which a town may appropriate money.

III. (a) For unanticipated moneys in the amount of \$5,000 or more, the public library trustees shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.

(b) The public library trustees may establish the amount of unanticipated funds required for notice

under this subparagraph, provided such amount is less than \$5,000. For unanticipated moneys in an amount less than \$5,000, the public library trustees shall post notice of the moneys in the agenda, if any, and shall include notice in the minutes of the public library trustees meeting in which such moneys are discussed. The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular public library trustees meeting.

IV. Action to be taken under this section shall:

(a) Not require the expenditure of other town funds except those funds lawfully appropriated for the same purpose; and

(b) Be exempt from all provisions of RSA 32, relative to limitations and expenditures of town moneys.

Source. 1991, 31:1. 1993, 176:16, eff. Aug. 8, 1993. 2005, 188:3, eff. Aug. 29, 2005.

Section 202-A:4-d

202-A:4-d Acceptance of Personal Property Donated to Libraries. –

I. Any town at an annual meeting may adopt an article authorizing the public library trustees to accept gifts of personal property, other than money, which may be offered to the library for any public purpose, and such authorization shall remain in effect until rescinded by a vote of town meeting.

II. The warrant article may require that, prior to the acceptance of any gift valued at over \$5,000, the public library trustees shall hold a public hearing on the proposed acceptance.

III. No acceptance of any personal property under the authority of this section shall be deemed to bind the town or the library trustees to raise, appropriate, or expend any public funds for the operation, maintenance, repair, or replacement of such personal property.

Source. 1996, 33:1, eff. June 23, 1996; 216:1, eff. June 23, 1996, at 12:01 a.m.

Section 202-A:5

202-A:5 Status. – Every public library shall remain forever free to the use of every resident of the town wherein it is located.

Source. 1891, 62:3, 4, 5. 1917, 59:1. PL 10:50. RL 15:50. RSA 202:1. 1963, 46:1, eff. July 1, 1963.

Section 202-A:6

202-A:6 Library Trustees; Election; Alternates. – The library trustees shall have the entire custody and management of the public library and of all the property of the town relating thereto, including appropriations held pursuant to RSA 202-A:11, III, but excepting trust funds held by the town. Any town having a public library shall, at a duly warned town meeting, elect a board of library trustees consisting of any odd number of persons which the town may decide to elect. Such trustees shall serve staggered 3-year terms or until their successors are elected and qualified. There may be no more than 3 alternates as provided in RSA 202-A:10.

Source. 1917, 59:1. PL 10:52. RL 15:55. RSA 202:6. 1963, 46:1. 1987, 89:1, eff. July 5, 1987. 2000, 9:2, eff. April 16, 2000.

Section 202-A:7

202-A:7 Special Provisions. – In any town where a public library has been acquired by the town, in whole or in part, by donation or bequest containing other conditions or provisions for the election of its trustees or other governing board, which conditions have been agreed to by vote of the town and which conditions do not provide for a representative of the public, a special library trustee, to represent the public, shall be elected by the town for a 3-year term. Said special trustee shall act with the other trustees.

Source. 1963, 46:1, eff. July 1, 1963.

Section 202-A:8

202-A:8 City Trustees. – The trustees of a public library in a city shall be elected as provided in the city charter. In case of trustees of a city library acquired by a city in whole or in part, by donation or bequest containing other conditions or provisions for the election or appointment of trustees, which conditions do not provide for a representative of the public on the board, the city council shall elect to said board a public trustee for a 3-year term.

Source. 1963, 46:1, eff. July 1, 1963.

Section 202-A:9

202-A:9 Eligibility. – [Repealed 1979, 410:2, XX, eff. July 1, 1979.]

Section 202-A:10

202-A:10 Library Trustees; Vacancies; Alternates. – Vacancies occurring on any board of library trustees in a town shall be filled as provided in RSA 669:75. A vacancy occurring among the publicly elected members of the board of library trustees of a city library shall be filled by the city council or other appropriate appointing authority within 2 months of the notice by the remaining members of the board of trustees. The board of library trustees may recommend to the appointing authority names of persons for appointment to vacancies on expired terms. The board of library trustees may recommend to the appointing authority the names of no more than 3 persons who may serve as alternate members on the board when elected members of the board are unable to attend a board meeting. The alternate members shall be appointed to one-year terms.

Source. 1917, 59:1. PL 10:55. RL 15:58. RSA 202:9. 1963, 46:1. 1979, 410:19, eff. July 1, 1979. 2000, 9:3, eff. April 16, 2000.

Section 202-A:11

202-A:11 Powers and Duties. – Except in those cities where other provision has been made by general or special act of the legislature, the library trustees of every public library in the state shall:

I. Adopt bylaws, rules and regulations for its own transaction of business and for the government of the library;

II. Prepare an annual budget indicating what support and maintenance of the free public library will be required out of public funds for submission to the appropriate agency of the municipality. A separate budget request shall be submitted for new construction, capital improvements of existing library property;

III. Expend all moneys raised and appropriated by the town or city for library purposes and shall direct that such moneys be paid over by the town or city treasurer pursuant to a payment schedule as agreed to by the library trustees and the selectmen or city council. All money received from fines and payments for lost or damaged books or for the support of a library in another city or town under contract to furnish library service to such town or city, shall be used for general repairs and upgrading, and for the purchase of books, supplies and income-generating equipment, shall be held in a nonlapsing separate fund and shall be in addition to the appropriation;

IV. Expend income from all trust funds for library purposes for the support and maintenance of the public library in said town or city in accordance with the conditions of each donation or bequest accepted by the town or city;

V. Appoint a librarian who shall not be a trustee and, in consultation with the librarian, all other employees of the library and determine their compensation and other terms of employment unless, in the cities, other provision is made in the city charter or ordinances.

Source. 1917, 59:1. 1919, 35:1. PL 10:56. 1927, 82:4. 1933, 60:3. RL 15:59. 1943, 90:2. RSA 202:10. 1963, 46:1. 1983, 272:1, eff. Aug. 17, 1983. 2000, 9:4, eff. April 16, 2000.

Section 202-A:11-a

202-A:11-a Use of Additional Funds. – All money received from a library's income-generating equipment shall be retained by the library in a nonlapsing fund and used for general repairs and upgrading and for the purchase of books, supplies and income-generating equipment if approved by the town or city in which the library is located in accordance with RSA 202-A:11-b.

Source. 1983, 272:2, eff. Aug. 17, 1983.

Section 202-A:11-b

202-A:11-b Procedure for Adoption. –

I. A town desiring to permit its library to retain money received from its income-generating equipment under RSA 202-A:11-a may have the question placed on the warrant for a town meeting at which town officers are elected in the manner provided in RSA 39:3. Such question shall be presented for voter approval in the following manner:

(a) A public hearing shall be held by the board of selectmen at least 15 but not more than 30 days before the date the question is to be voted. Notice of the hearing shall be posted in 2 public places in the town and published in a newspaper of general circulation at least 7 days prior to the hearing.

(b) For a town which has an official ballot for the election of town officers, the officer who prepares the ballot shall place the question on such official ballot as it appears in subparagraph (d).

(c) For a town which does not have an official ballot for the election of town officers, the clerk shall prepare a ballot in the form as provided in subparagraph (d).

(d) The wording on the ballot shall be as follows: ""Shall we permit the public library to retain all money it receives from its income-generating equipment to be used for general repairs and upgrading and for the purchase of books, supplies and income-generating equipment?""

(e) Upon the ballot containing the question shall be printed the word ""Yes" with a square near it at the right hand of the question; and immediately below the word ""Yes" shall be printed the word ""No" with a square near it at the right hand of the question. The voter desiring to vote upon the question shall make a cross in the square of the voter's choice. If no cross is made in a square beside the question, the ballot shall not be counted on the question.

II. A city desiring to permit its library to retain money received from its income-generating equipment under RSA 202-A:11-a may have the question placed on the official ballot for any regular municipal election for the election of city officers upon a vote of the city council or upon submission of a petition signed by 5 percent of the registered voters of the city to the city council. Such question shall be presented to the voters in the following manner:

(a) A public hearing shall be held by the city council at least 15 but not more than 30 days before the date the question is to be voted. Notice of the hearing shall be posted in 2 public places in the city and published in a newspaper of general circulation at least 7 days prior to the hearing.

(b) The question shall be placed on the official ballot by the city clerk with the wording and in the form provided for in paragraph I(d).

III. Upon approval of the question by a majority of those voting on the question, the provisions of RSA 202-A:11-a shall be deemed to have been adopted.

IV. If after adoption of the provisions of RSA 202-A:11-a, any town or city desires to rescind its adoption, it may do so by referendum pursuant to paragraphs I or II by changing the wording in the question on the referendum.

Source. 1983, 272:2, eff. Aug. 17, 1983. 1996, 33:2, eff. June 23, 1996.

Section 202-A:12

202-A:12 Annual Reports. – Every library regularly open to the public, or to some portion of the public, with or without limitations, whether its ownership is vested in the town, in a corporation, in an organization or association, or in individuals, shall make a written report to the town or city at the conclusion of each fiscal year of (a) all receipts from whatever sources, (b) all expenditures, (c) all property in the trustees' care and custody, including a statement and explanation of any unexpended balance of money they may have, (d) and any bequests or donations they may have received and are holding in behalf of the town, with such recommendations in reference to the same as they may deem necessary for the town to consider, (e) the total number of books and other materials and the number added by gift, purchase and otherwise; the number lost or withdrawn, (f) the number of borrowers and readers and a statement of the use of the property of the library in furthering the educational requirements of the municipality and such other information and suggestions as may seem desirable, (g) submit a similar report to the state librarian at such time and on such forms as the commissioner of cultural resources may require.

Source. 1917, 59:1. PL 10:57. RL 15:60. RSA 202:11. 1963, 46:1. 1990, 73:1, eff. June 5, 1990. 1998, 363:3, eff. Aug. 25, 1998.

Section 202-A:12-a

202-A:12-a Trust Fund Annual Reports. – Any public library holding funds in trust shall report to the office of the attorney general, annually at the conclusion of each fiscal year, the information required by RSA 202-A:12(a) through (d).

Source. 1986, 74:1, eff. July 11, 1986.

Section 202-A:13

202-A:13 Discretionary Powers. – The library trustees shall also have the following powers:

I. To authorize the payment from library funds for the necessary expenses of library staff members attending library courses and meetings for professional advancement;

II. To extend the privileges and use of the library to nonresidents upon such terms and conditions as they may prescribe;

III. To deposit library funds for the purchase of books and related materials with the state treasurer to secure economies through pooling of purchasing with the state library. Such funds so deposited shall be held by the state treasurer in a separate account to be paid out upon orders of the state library. The state library shall have no control over the selection of items to be purchased by public libraries.

Source. 1917, 59:1. 1919, 35:1. PL 10:56. 1927, 82:4. 1933, 60:3. RL 15:59. 1943, 90:2. RSA 202:10. 1963, 46:1, eff. July 1, 1963.

Section 202-A:14

202-A:14 Compensation of Trustees. – No trustee of any public library shall receive any compensation for any services rendered as such trustee, unless compensation is stipulated in the terms of the bequest or gift establishing the library. Trustees may be reimbursed, however, for necessary travel expenses to attend professional meetings.

Source. 1933, 60:4. RL 15:61. RSA 202:12. 1963, 46:1, eff. July 1, 1963.

Section 202-A:15

202-A:15 Public Librarian; Qualification and Tenure. – The librarian shall have education of sufficient breadth and depth to give leadership in the use of books and related materials. The librarian shall be appointed by the board of library trustees for a term of office agreed to at the time of employment and until a successor is appointed and qualified.

Source. 1963, 46:1, eff. July 1, 1963. 1996, 33:3, eff. June 23, 1996.

Section 202-A:16

202-A:16 Powers and Duties. – In addition to any other duties which the librarian may be delegated from time to time, the public librarian shall:

I. Serve as the administrative officer of the public library;

II. Recommend to the board of library trustees the appointment of all employees.

Source. 1963, 46:1, eff. July 1, 1963. 1996, 33:4, eff. June 23, 1996.

Section 202-A:17

202-A:17 Employees; Removal. – No employee of a public library shall be discharged or removed from office except by the library trustees for malfeasance, misfeasance, or inefficiency in office, or incapacity or unfitness to perform the employee's duties. Prior to the discharge or removal of any such employee, a statement of the grounds and reasons therefor shall be prepared by the library trustees, and

signed by a majority of the board, and notice thereof shall be given to the employee not less than 15 days nor more than 30 days prior to the effective date of such discharge or removal. Upon receipt of said notice and within 30 days thereafter, but not otherwise, the employee may request a public hearing. If such request is made, the library trustees shall hold a public hearing on such discharge or removal. The hearing shall be held not more than 30 days after receipt of the request for the hearing, and if the trustees, upon due hearing, shall find good cause for discharge or removal of the employee, they shall order the employee's discharge or removal from office. There shall be no change in salary of such employee during the proceedings for discharge or removal nor until the final effective date of the order for discharge or removal. The provisions of this section shall apply to the employees of any public library except in a case where the city or town has personnel rules and regulations which apply to such employees and which make provision for a public hearing in the case of such discharge or removal.

Source. 1955, 18:1. RSA 202:10-a. 1963, 46:1, eff. July 1, 1963. 1996, 33:5, eff. June 23, 1996.

Section 202-A:18

202-A:18 Discontinuance of Library. – Any town now maintaining a public library established by expenditure of town funds may by majority vote at a regular town meeting discontinue said library. In case of such discontinuance, the library property of the town may be loaned or disposed of by the library trustees, subject to the approval of the commissioner of cultural resources. The provisions of this section shall not apply in cases where a public library has been acquired by the town in whole or in part by donation or bequest.

Source. 1933, 60:2. RL 15:54. RSA 202:5. 1963, 46:1. 1985, 268:41. 1990, 73:1, eff. June 5, 1990. 1998, 363:3, eff. Aug. 25, 1998.

Section 202-A:19

202-A:19 Defunct Libraries. – When a public library in any town shall, as such, cease to function, all books or other property given by the state for the use of said library or purchased with state funds shall be returned to the state by the selectmen of said town, delivery to be made to the commissioner of cultural resources, who shall have the power to retain, sell, distribute, or otherwise dispose of such returned books or property as in its judgment seems wise.

Source. 1917, 59:1. PL 10:58. 1927, 82:5. RL 15:62. RSA 202:13. 1963, 46:1. 1990, 73:1, eff. June 5, 1990. 1998, 363:3, eff. Aug. 25, 1998.

Section 202-A:20

202-A:20 Custody of Publications. – Any town clerk, board of selectmen, or others having custody of the books, pamphlets, and public documents that have been sent to the towns by the departments of state government may, with consent of the librarian, transfer these publications to the public library, upon condition that they be included in the catalogues of the library and be made accessible to the public.

Source. 1913, 48:1. PL 10:60. RL 15:64. RSA 202:15. 1963, 46:1, eff. July 1, 1963.

Section 202-A:21

202-A:21 Penalties. – Any town or library official violating any of the provisions of this chapter shall be guilty of a misdemeanor.

Source. 1917, 59:1. PL 10:61. RL 15:65. RSA 202:16. 1963, 46:1. 1973, 529:38, eff. at 11:59 P.M., Oct. 31, 1973.

Section 202-A:22

202-A:22 Custody and Control of Trust Funds. – Trust funds given to towns and cities for the use of a public library shall be held in the custody and under the management of the trustees of trust funds. The entire income from such funds shall be paid over to the library trustees. Payment of such income shall be made by the trustees of trust funds to the library trustees as the same is received.

Source. 1917, 59:1. 1919, 35:1. PL 10:56. 1927, 82:4. 1933, 60:3. RL 15:59. 1943, 90:2. RSA 202:10. 1963, 46:1, eff. July 1, 1963.

Section 202-A:23

202-A:23 Exceptions. – Nothing in this chapter shall preclude the library trustees from accepting, receiving, investing and administering directly any trust funds and donations when so specified by the donor. Library trustees administering and investing such special funds shall be governed by the provisions of RSA 31:25 and RSA 41:6.

Source. 1963, 46:1. 1983, 264:5. 1991, 31:2, eff. June 18, 1991.

Section 202-A:24

202-A:24 Offenses Against Libraries. – Any person who shall wilfully or maliciously deface, damage or destroy any property belonging to or in the care of any gallery or museum or any state, public, school, college, or other institutional library, shall be guilty of a misdemeanor. Any such person shall forfeit to or for the use of such library, gallery, or museum, 3 times the amount of the damage sustained, to be recovered in an action in the superior court.

Source. 1959, 60:1. RSA 572:42-a. 1973, 529:128; 532:11, eff. Nov. 1, 1973.

Section 202-A:25

202-A:25 Detaining Books. – Any person who willfully detains any book, newspaper, magazine, manuscript, pamphlet, publication, recording, film, or other property belonging to or in the care of any gallery or museum of any state, public, school, college, or other institutional library, may be given written notice to return it, which shall bear upon its face a copy of this section, mailed by certified mail to such person's last address or delivered by a person designated by the lawful custodian of such property; and if such person shall thereafter willfully and knowingly fail to return such property within 15 days after such notice, the person shall be guilty of a violation.

Source. 1959, 60:1. RSA 572:42-b. 1973, 532:11, eff. Nov. 1, 1973. 1996, 33:6, eff. June 23, 1996

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Clerk/Reporter, Supreme Court of New Hampshire, Supreme Court Building, Concord, New Hampshire 03301, of any errors in order that corrections may be made before the opinion goes to press.

THE SUPREME COURT OF NEW HAMPSHIRE

Grafton
No. 93-250

TOWN OF LITTLETON & a.

v.

KATHRYN TAYLOR

April 12, 1994

Moulton, Samaha, Vaughan & Foley, P.A., of Littleton (Stephen U. Samaha on the brief and orally), for the plaintiff, Town of Littleton.

Douglas & Douglas, of Concord (Charles G. Douglas, III and Susanna L. Giombetti on the brief, and Mr. Douglas orally), for the intervenors, Eddy L. Moore, Ferne J. Foster, Jr., and Kenneth E. Curran.

Stebbins, Bradley, Wood & Harvey, PA., of Hanover (David H. Bradley on the brief and orally), for the defendant.

BROCK, C.J. Three taxpayers (the intervenors) from the Town of Littleton (the town) appeal an order of the Superior Court (Morrill, J.) dismissing the town's petition for declaratory judgment. The intervenors argue that RSA 669:7 (1986) and the common law doctrine of incompatibility of offices precludes the defendant's simultaneous employment as librarian and service as town selectman. The defendant cross-appeals an order of the Superior Court (Morrill, J.) denying her motion for attorney's fees. The defendant argues that she should be awarded attorney's fees under the "public trust" theory set forth in Silva v. Botsch, 121 N.H. 1041, 1043, 437 A.2d 313, 314 (1981). We affirm the order concerning declaratory judgment, reverse the order concerning attorney's fees, and remand.

The defendant, Kathryn Taylor, was appointed librarian of the Littleton Public Library (the library) by the Littleton Board of Library Trustees (the board) pursuant to RSA 202-A:11, V (1989). Twelve years later, she was elected to the office of town selectman for a three-year term and took office. The next day, the town's two other selectmen petitioned in the name of the town for declaratory judgment

and injunctive relief. The town sought both a judgment as to whether the defendant's simultaneous employment as librarian and service as town selectman violated RSA 669:7, and an injunction against her participation as selectman until the issue was resolved. The two selectmen asserted neutrality on the issue, and three town residents intervened in order to protect the interests of the town's taxpayers. All parties submitted an agreed statement of facts. The court dismissed the town's petition, holding that the defendant had not violated the statute as she was not a full-time employee of the town. The court denied the defendant's motion for reimbursement of her legal fees incurred in defending the action.

We will not disturb the trial court's ruling absent an abuse of discretion or a finding that the decision is unsupported by the evidence or legally erroneous. In re Kearsarge Regional School District, 138 N.H. _____, _____, 636 A.2d 1033, 1035 (1994).

The intervenors argue that the defendant's simultaneous employment as librarian and service as town selectman violate RSA 669:7. The statute reads, in pertinent part: "No full-time town employee shall at the same time hold the office of selectman."

The trial court found that the defendant "is not a full-time employee of the Town. She is a full-time employee of the Town Library." Consequently, we first determine if the trial court erred in finding that the defendant is a full-time employee of the library.

In determining whether an employer-employee relationship exists, we consider factors such as managerial and fiscal control. Samaha v. Grafton County, 126 N.H. 583, 586, 493 A.2d 1207, 1210 (1985). The characteristics of the defendant's employment were enumerated in the parties' agreed statement of facts. Those facts are consistent with the trial court's determination that the defendant was an employee of the library and not of the town. They provide ample evidence of the library board's managerial and fiscal control over the librarian and the town's lack thereof. For example, the board appoints the librarian, determines compensation and other terms of employment, and has the exclusive power to discharge or remove the librarian from office. RSA 202-A:11, V, :17 (1989). Neither the town's board of selectmen nor the town manager has any authority to assign duties to, to supervise the work of, or to remove the librarian. In contrast, public employees of the town are appointed and removed by the town manager, who also sets their compensation. RSA 37:6, II (1988); P. Loughlin, 13 New Hampshire Practice, Local Government Law 383, at 260 (1990). We find no error in the trial court's conclusion that the defendant is a full-time employee of the library. See Samaha, 126 N.H. at 586, 493 A.2d at 1210.

The intervenors argue that the trial court's order is "confusing" and "legally erroneous" because it stated that the defendant was "the full-time public librarian for the Town," but that she "is not a full-time employee of the Town." Any confusion on the intervenors' part stems from their erroneous assumption that employment as librarian of a public library in a town automatically equates to employment by that town. A "public library" is defined as a library "which provides regular and currently useful library service to the public without charge," and which receives regular financial support from public sources, such as a town, or private sources. See RSA 202-A:2, I (1989). Further, a "public library" is "every library regularly open to the public, or to some portion of the public, with or without limitation, . . . whether its ownership is vested in the town, in a corporation, in an organized association, or in individuals." RSA 41:21 (1991).

The intervenors' argument ignores the trial court's specific finding that the library "is a separate and distinct entity" from the town. The Littleton Public Library was established pursuant to a contract between Andrew Carnegie and the town in 1902. Carnegie donated funds to construct the library building in return for the town's pledge to provide continuing financial support. The Littleton Board of Library Trustees is the governing board of the library. RSA 202-A:2, II (1989). The publicly elected board is

vested with the entire custody and management of the library and of all the property of the town relating thereto, except trust funds held by the town. RSA 202-A:6 (1989). The board has adopted and maintained bylaws which govern the library. RSA 202-A:11, I (1989).

The library budget is funded by both town taxes and private sources. The board determines how to expend, and has the power to expend, all funds provided to the library. RSA 202-A:11, II-IV (1989). Most important, the town has no power to discontinue the library. RSA 202-A:18 (1989 & Supp. 1993). We find no error in the trial court's finding that the defendant's employment as librarian of the Littleton Public Library does not equate to employment by the Town of Littleton. Cf. Jaskola v. City of Manchester, 134 N.H. 45, 49, 587 A.2d 256, 258 (1991). Consequently, the defendant's simultaneous employment as librarian and service as town selectman do not violate the statute. See Tappan v. Shaw, 113 N.H. 353, 354-55, 306 A.2d 762, 763 (1973).

The intervenors also argue that the common law doctrine of incompatibility of offices precludes the defendant from simultaneous employment as librarian and service as town selectman. We disagree. The doctrine bars an individual from holding two offices when one office is subordinate to the other, as the governmental checks and balances are eliminated because an individual is reviewing his or her own work. P. Loughlin, supra 622, at 420. We have held that membership on a school district's prudential committee (officers of the school district) was incompatible with the position of auditor of that same school district. Cotton v. Phillips, 56 N.H. 220, 223 (1875). Prudential committee members administered the affairs of the school district, took custody of and disbursed the money apportioned to the district, and made contracts with school teachers. The auditors examined the accounts and vouchers of the prudential committee and reported their findings. The two offices were incompatible as an auditor sat in judgment on the acts of the prudential committee, and could conceal a misappropriation of funds from the district. Id.

We have also held that the position of school teacher in a city school district was not incompatible with the office of city councilman, where the school district hired the teacher and determined teacher salaries, and the general management and control of the public schools was vested in the school board and not the city council. Tappan v. Shaw, 113 N.H. at 354-55, 306 A.2d at 763. As noted above, the defendant librarian is not subordinate to the town's board of selectmen or the town manager. The library board of trustees appoints the librarian, determines her salary, and is vested with the management and control of the library.

It is true that the town's board of selectmen fills a vacancy in the office of library trustee by appointment. RSA 202-A:10 (1989); RSA 669:75 (1986). The doctrine of conflict of interest, however, is not equivalent to that of incompatibility of offices. P. Loughlin supra. The defendant has publicly declared that she would abstain, as selectman, from voting to fill a vacancy in the library board, should one occur. Such abstention would defuse that possible conflict of interest. Although the city charter does not appear in the text of Tappan, selected sections of it are a part of the record in this case. We note that the city council in Tappan was also charged with filling any vacancy in the offices of the school board. We hold that the defendant's simultaneous employment as librarian and service as town selectman do not violate the common law doctrine of incompatibility of offices.

On her cross-appeal, the defendant argues that the town should pay her attorney's fees under the "public trust" theory set forth in Silva v. Botsch, 121 N.H. 1041, 1043, 437 A.2d 313, 314 (1981). The town argues that attorney's fees are not appropriate in this case because the town's petition did not seek the defendant's removal as selectman, and because the defendant did not initiate the litigation. The town also argues that if attorney's fees are awarded, the intervenors should pay them and not the town.

In reviewing the trial court's denial of the defendant's motion for attorney's fees, we defer to the trial court's decision and will not overturn it absent an abuse of discretion. Maguire v. Merrimack Mut. Ins. Co., 133 N.H. 51, 54-56, 573 A.2d 451, 453-54 (1990). Although the general rule is that each party pays his or her own attorney's fees, the legislature and judiciary have created a number of flexibly applied exceptions. Irwin Marine, Inc. v. Blizzard, Inc., 126 N.H. 271, 276, 490 A.2d 786, 790-91 (1985). The legislature has provided that both State and county officials who successfully resist removal may obtain costs and attorney's fees. Foster v. Town of Hudson, 122 N.H. 150, 151, 441 A.2d 1183, 1184 (1982); see RSA 4:1, IV (1988); RSA 28:10-a, IV (1988). We have held that local officials should have the same privilege. Foster, 122 N.H. at 151, 441 A.2d at 1184.

This petition for declaratory judgment, brought after the defendant had already taken office as selectman, essentially placed her in the same position as if a quo warranto proceeding had been brought against her. See Attorney-General v. Marston, 66 N.H. 485, 486-87, 22 A. 560, 561 (1891). She defended against the petition in order to retain her official, elected position as selectman. Therefore, we hold that the defendant is entitled to an award of attorney's fees. See Silva, 121 N.H. at 1045, 437 A.2d at 315; Foster, 122 N.H. at 152, 441 A.2d at 1184. We further find it appropriate under these circumstances to require the town to pay the defendant's attorney's fees. As a public trustee elected to administer municipal affairs, the defendant not only vindicated her own right to hold the office of selectman, but also conferred a substantial benefit on the town she serves. See Irwin Marine, Inc., 126 N.H. at 276, 490 A.2d at 791.

We reserve the trial court's denial of the defendant's motion for attorney's fees and remand for a determination as to the reasonable amount of attorney's fees that she should receive from the town.

Affirmed in part; reversed in part;
remanded.

JOHNSON, J., did not sit; the others concurred.