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Introduction

Legal issues arise in all aspects of daily life, and public libraries are no exception. The purpose of this work is to address law-related questions raised by public librarians in Georgia. The explanations and proposed solutions do not take the place of professional legal counsel. Rather, this work is meant to raise awareness of the current state of the law as it applies to actual situations faced by librarians.

The questions addressed were generated through a state-wide survey of Georgia's public library directors. In many instances, specific questions have been broadened in this work in order to encompass several related issues. In all cases, each original question was answered directly and any follow-up questions have been incorporated herein.

Depending on the scope of each question, the legal analyses take into account Federal and state laws and regulations. When available, legal authority from Georgia is used; often, however, authority from other jurisdictions is referenced. While court rulings and statutes from other jurisdictions are not binding in Georgia, these sources provide valuable guidance and should be considered carefully.

Chapter 1

Access Issues

The First Amendment of the United States Constitution creates a right to access information. This right is not specifically enumerated within the language of the First Amendment, but the United States Supreme Court's interpretation of the law has broadened its scope to encompass the right to receive information and ideas as well as the right to read. "Public libraries play a vital role in promoting the fullest exercise of that right."¹ Therefore, placing restraints on a public library user's access to the library or what is available in the library could implicate First Amendment concerns and should be approached with caution. The questions and proposed solutions below will illustrate some important factors librarians should keep in mind before taking actions that may prevent access to the library or its stores of information.

Q1: Is it legal for a public library to allow a convicted sex offender to (a) be in a public library and (b) have a public library card? Do library staff members have any responsibility for calling officers in to remove the offender?

O.C.G.A. § 42-1-15(e) prohibits any convicted sex offender from loitering at any child care facility, school, or area where minors congregate. A public library has been defined by Georgia law as "a place where minors congregate."² Loitering is defined as being in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.³

O.C.G.A. § 42-1-15 is directed at the convicted sex offender, not the entities listed. Subsection (i) of the statute specifically states : "Nothing in this Code section shall create, either

directly or indirectly, any civil cause of action against or result in criminal prosecution of any person, firm, corporation, partnership, trust, or association other than an individual required to be registered under Code Section 42-1-12.”

Thus, there is no obligation for library staff to (1) know who is a registered sex offender, (2) deny access to the physical library or a library card to convicted sex offenders, or (3) summon law enforcement to remove a registered offender. Moreover, attempts to preclude an individual from the public library based on his status as a registered sex offender would violate that individual’s First Amendment rights and could expose the library to a lawsuit.

The United States Court of Appeals for the Third Circuit held that the First Amendment establishes the right to some level of access to the public library.⁴ While this issue has not been addressed by courts in Georgia, the Third Circuit’s reliance upon established Supreme Court precedent in First Amendment cases makes the likelihood of a similar result in other jurisdictions high. Therefore, in evaluating the Constitutional validity of a policy or action by a Georgia public library that hinders access to the library, the Third Circuit’s opinion in the *Kreimer* case is necessary to consider.

In *Kreimer*, the public library prohibited a homeless man from using the library due to his odor. The appellate court ultimately upheld the library’s policy, which stated, “Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.”⁵ The court in *Kreimer* recognized that this rule “would require the expulsion of a patron who might otherwise be peacefully engaged in permissible First Amendment activities within the purposes for which the Library was opened, such as reading, writing or quiet contemplation.”⁶ The Third Circuit went on, however, to find that because the

purpose of the rule was to prohibit one patron from unreasonably interfering with other patrons' use and enjoyment of the Library, the policy was a narrowly tailored restriction used to promote the library's "significant interest in ensuring that 'all patrons of the [Library] [can] use its facilities to the maximum extent possible during its regularly scheduled hours.'"⁷

The lesson to be learned from *Kreimer* is two-fold: (1) prohibiting an individual from accessing the public library may result in a lawsuit, and (2) in order for the policy underlying the prohibition to pass Constitutional muster, it must be narrowly tailored to meet a significant interest of the public library. Applying the teaching of *Kreimer* to the situation involving a registered sex offender and his or her access to the public library, it is easy to conclude that the public library has a significant interest in maintaining the safety of the children and all patrons who congregate there. Arguably, prohibiting registered sex offenders from coming into the library is a means of furthering that interest. Before a public library enacts such a policy, however, it is crucial to consider the practical aspects of the situation and determine whether such a drastic step is actually necessary. For example, it is important to evaluate whether there is a history of inappropriate behavior in the library by a known registered sex offender or if, on the other hand, the library is being utilized in the appropriate manner by a patron who happens to be a registered sex offender. If a patron's conduct is such that library staff members are concerned about the safety of themselves and other library users, authorities should be notified—this is true whether the offending party is a registered sex offender or a pillar of the community. Presumably, the library already has policies in place that prohibit certain conduct within the building. Therefore, it is likely that any offensive conduct on the part of a registered sex offender would be covered by that policy. Thus, there is little to be gained by creating a

policy to ban registered sex offenders from the public library based solely on their status as offenders, particularly when enacting such a policy carries the risk of a legal challenge.

Q2: An inmate has requested from the Talking Book Center books containing erotica and stories about rape and incest. The warden of the prison has advised the library not to send his inmates any erotic tapes because they “have enough problems already.” Do we abide by the Warden’s request? Are there laws that allow the warden to act as legal guardian of the prisoners?

There is no law allowing the warden of a prison to act as the legal guardian of inmates in his facility; the warden serves as an inmate’s custodian. The legal custodian does not have the power to waive a prisoner’s Constitutional rights, and a violation of those rights gives rise to a legal cause of action.

The United States Supreme Court has held that penological institutions may enact regulations limiting items that may be sent to prisoners in the facility.⁸ Any such regulation, however, is required to be reasonably related to legitimate penological interests such as crime deterrence, rehabilitation, and institutional security.⁹ In other words, prison authorities may not arbitrarily prohibit the receipt of books by inmates, but a policy or regulation that prohibits the receipt of materials containing sex or violence may be valid.

In the situation described above, the library has been asked by the warden to refrain from sending certain materials into the facility despite requests from inmates. In order to determine the appropriate response to this issue, the library should request the warden to provide his facility’s actual written policy or regulation regarding inmates’ receipt of written or audio materials. Without knowledge of the precise policy, the library cannot determine whether a particular item would be acceptable or prohibited.

In the event that the warden indicates there is no written policy or fails to provide it to the library, there is no valid basis to deny an inmate's request regardless of the nature of the items he seeks. On the other hand, if the warden provides a written policy that seems overreaching or unlikely to survive scrutiny by a court, the library has no standing to challenge the policy legally. Only an inmate or a publisher of information has the legal right to make this challenge. However, there is no liability on the part of the library if it sends materials upon request that would be prohibited by the policy. This is true even if the policy is a valid policy that has been endorsed by the courts.

Once provided with a valid written policy, the library still faces the determination of whether certain materials are prohibited by the policy, which is a subjective one. The responsibility for making this determination should not fall on the shoulders of the library. It is the responsibility of the correctional facility to screen items received, make this determination, and reject any items deemed to be prohibited under its regulations.

In short, the library has no duty to follow the directive of the warden, particularly without further inquiry into the prison's written policies on the ability of inmates to receive materials. Therefore, the library should treat a request by an inmate in the same manner as any other request: it should be honored if the individual is otherwise eligible to receive library materials.

Q3: What can we do about the daily porn viewer who comes in and asks that filters be removed?

Public libraries began offering patrons access to the Internet in the mid-1990s. By 2007, 99.1 percent of public library branches in the United States provided Internet access to patrons.¹⁰ Concerns arose that library computers, partially funded by federal dollars, were being used to access illegal and harmful pornography by adults and minors.¹¹ As a result, Congress passed the

Children’s Internet Protection Act (“CIPA”).¹² CIPA requires public libraries that receive certain federal funds to block three categories of Internet content: (a) obscene material, (b) child pornography, and (c) material that is harmful to minors. After a challenge to the constitutionality of the law by the American Library Association, CIPA was upheld as constitutional by the United States Supreme Court,¹³ which found that Internet access is offered in public libraries “to facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality.”¹⁴ The United States Supreme Court recognized that filters can result in blocking constitutionally-protected speech, but because CIPA allows librarians to disable the filters for adult patrons, the Court found the temporary inconvenience of requesting the filter be turned off was outweighed by the need to protect minors from inappropriate material. Thus, the fact that the filters could be turned off upon request was a crucial factor in the Court’s decision to uphold the law.

A library policy that results in a wholesale refusal to disable filters at the request of an adult patron falls outside of what was approved by the United States Supreme Court and could expose a library to a legal challenge. In fact, there is a pending lawsuit in the Eastern District of Washington in which library patrons have challenged the policy adopted by the North Central Regional Library District (“NCRL”) whereby NCRL will not, at the request of adults who wish to access Constitutionally-protected speech, disable Internet filters that are installed on its publicly-available computer terminals.¹⁵ The challenge is based both upon the First Amendment of the United States Constitution as well as provisions of the Washington State Constitution. The case may be resolved wholly under the Washington State Constitution, in which case the result would not be applicable to a Georgia library, but the possibility of a court challenge to a similar policy is likely in any venue.

Another important factor in assessing a library's Internet use policy is even-handed application to all adult patrons. At least one court has held that a library's failure to follow its own policies and procedures is a violation of the Fourteenth Amendment of the United States Constitution.¹⁶ Therefore, the library may not refuse to remove the Internet filter for one adult patron while granting the request of another patron.

The resolution of this situation lies in the crafting of a policy related to Internet use that achieves the library's goal (preventing the use of the library's computers to view pornography even by adults) without infringing on users' First Amendment rights. It is important to note that the patrons in the Washington case who were denied unfiltered access to the Internet were seeking to access Constitutionally-protected speech such as information on alcohol and drug-addiction topics, an art gallery web site, and sites containing health-related information. A patron complaining about the refusal to remove filters to allow him to view obscene material, which the United States Supreme Court has determined is not Constitutionally-protected speech,¹⁷ would not be likely to prevail in a suit against the library. Of course, making a determination as to whether a particular Website contains "obscene material" is subjective. According to the United States Supreme Court, a work is obscene if it would be found appealing to the prurient interest by an average person applying contemporary community standards depicts sexual conduct in a patently offensive way, and has no serious literary, artistic, political or scientific value.¹⁸ Community standards—not national standards—are applied to determine whether the material appeals to the prurient interest; thus, material may be deemed obscene in one locality but not in another; national standards, however, are applied in determining whether the material is of value.¹⁹

The Georgia legislature has provided a more detailed definition:

Material is obscene if:

- (1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion;
- (2) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and
- (3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E) of this paragraph:

(A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;

(B) Acts of masturbation;

(C) Acts involving excretory functions or lewd exhibition of the genitals;

(D) Acts of bestiality or the fondling of sex organs of animals; or

(E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.²⁰

While both Georgia and Federal law provide these definitions and there are numerous court interpretations of what comprises “obscene” material, it is not practical for library staff to spend countless hours determining whether particular sites contain obscene material in order to decide whether to disable the Internet filter. A better approach for the library in this instance may be to include a clause in its policy stating that the viewing of (a) obscene material, (b) child pornography, or (c) material that is harmful to minors is always prohibited on library computers.

The DeKalb County Public Library’s Internet Use Policy is a good example:

While using the Internet at the Library, patrons may not display, print, or transmit images unsuitable for a general audience. This includes, but is not limited to, material that is obscene as defined under Georgia law (O.C.G.A. § 16-12-80), child pornography as defined under federal or state law (18 U.S.C. § 2256; O.C.G.A. § 16-12-100), and material that is "harmful to minors" as defined under Georgia law (O.C.G.A. § 16-12-102). In compliance with the Children's Internet Protection Act [Pub. L. No. 106-554 and 47 U.S.C. § 254(h)], the Library employs a technology protection measure (filtering software) on all computers to block or filter access to inappropriate information. Subject to staff supervision,

this technology protection measure may be disabled upon request only for bona fide research or other lawful purposes.²¹

Once a valid policy is in place, the next issue will be enforcement of that policy. This will be addressed in Chapter 2.

In conclusion, any action taken by a public library to deny a person access to the library itself, its holdings, or the Internet should be done with caution. The library may have strong reasons for its decision to deny access; however, these reasons must be weighed against First Amendment rights of individuals. Otherwise, the library is opening the door to potential legal challenges.

Chapter 2

Use of Library Policies to Manage Problem Behavior by Patrons

As discussed in Chapter 1, the First Amendment of the United States Constitution establishes a right to access the public library and the information contained therein.²² Within the State of Georgia, the legislature has determined that public libraries are part of the state's public education system.²³ Therefore, members of the public have a protected interest in accessing the library and its holdings. The individual's right is not unlimited, however. Public libraries may impose reasonable policies governing patron behavior.²⁴ The purpose of such policies is to "balance the rights of the library community as a whole with the individual's rights to access and use the library."²⁵ While not addressed by courts in Georgia, courts in other jurisdictions, when weighing the Constitutional validity of library policies, have found that the public library "is obligated only to permit the public to exercise rights that are consistent with the nature of the Library and consistent with the government's intent in designating the Library as a public forum."²⁶

In order to create and enforce valid policies that govern patron conduct and use of library facilities and equipment, the following legal concepts should be kept in mind:

1. Reflection of the library's mission

A library's policies are its governing rules and should be drafted with an eye toward achieving the library's overall mission. For the most part, individual libraries have their own mission statement, and these vary from place to place depending on the size of the library, the nature of the community, etc. The library profession as a whole, in considering public libraries, ascribes to the "library faith," which is the "belief that libraries support reading and the democratic process."²⁷

Courts have described the purpose of public libraries in similar terms. In 1966, the United States Supreme Court provided its view of the purpose of public libraries, stating that a public library is a "place dedicated to quiet, to knowledge, and to beauty."²⁸ Public libraries are "dedicated to reading and learning and studying," and the United States Supreme Court noted that the maintenance of "peace and order" in public libraries was of utmost importance, so that libraries could "further the extremely necessary purposes underlying their existence."²⁹ In 1992, the United States Court of Appeals for the Third Circuit held that libraries provide a place for "reading, writing, and quiet contemplation."³⁰ In the more recent United States Supreme Court decision related to the Children's Internet Protection Act, the Court found that the public library offers resources "to facilitate research, learning, and recreational pursuits."³¹

In order for a court to uphold a library policy restraining or proscribing certain patron conduct, that policy should directly relate to the library's overall reason for being. In other words, the policy should be a means to allow the library to fulfill its mission.

2. Legitimate purpose

Policies governing patron behavior and use of library facilities often are restrictive in nature and curtail an individual's unfettered access to the library resources. In order to be upheld by a court as a valid policy, the rule should have a legitimate purpose.³² For example, a time limitation on computer use is imposed for the legitimate purpose of making library resources available to as many users as possible. On the other hand, a policy enacted by a pro-life library prohibiting the viewing of Websites related to abortion has no legitimate purpose. Rather, this policy's purpose is to restrain users' freedom of access to information from a particular point of view.

Courts assessing the validity of a particular policy will scrutinize the actual purpose underlying the rule.³³ Therefore, the drafters of a library policy regulating patron conduct and use of the library should take the time to identify the actual purpose behind the policy and be satisfied that this purpose is a legitimate aim of the library rather than a furtherance of a particular viewpoint.

3. Specificity

A policy directing patron conduct must be specific enough to put a library user on notice of what is and what is not allowed. Otherwise, the policy will be “void for vagueness.”³⁴ Many times, the library policy at issue simply prohibits illegal activity, which is a non-specific directive. However, “[t]he general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system.”³⁵ Therefore, a library policy prohibiting illegal activity would not likely be invalidated due to its lack of specificity. It would be an advisable practice, however, to notify a patron of precisely what law is being violated and allow the patron the opportunity to correct his or her behavior prior to taking disciplinary action.

4. Applied uniformly

In order for a policy that restricts or inhibits conduct of a library patron to be valid, the library must apply the policy in a uniform manner. In other words, the policy must be applicable to all patrons at all times. Failure to apply a policy in a consistent and fair manner would be tantamount to discrimination.³⁶

5. Properly communicated

Finally, in order to regulate patron conduct, the library must inform its users of its policies. This can be done by physically posting the policies within the library or electronically

on the library's Website. Library staff should be prepared to provide a printed copy of the library's policies to patrons upon request. And when a library user is approached about violating a library policy, giving this patron a copy of the written policy at issue is a good idea.

6. Due process

Because individuals have a right to access the public library, depriving someone of this right requires due process of law.³⁷ The purpose of due process is protection of the individual against arbitrary action of the government.³⁸ Due process requires the protection that a particular situation demands.³⁹ At a minimum, “[p]arties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.”⁴⁰ When a library notifies the wrongdoer of the charges against him allows him to present his side of the story, due process has been afforded.⁴¹

Below are examples of how a library can regulate certain patron behavior through policies that meet the legal criteria discussed above.

Q4: A patron is utilizing library computers (often more than one at a time) to burn DVDs. Library staff believe he is pirating commercial DVDs, but this has not been confirmed. Can he be questioned about his activities? What is the limit of the library's liability if he is conducting illegal activity?

This entire scenario can be addressed through the enforcement of library policies. Policies that limit access to one computer per person and that prohibit the use of library equipment for illegal activities further legitimate purposes of the library. Therefore, as long as these policies are unambiguous, clearly communicated, and applied uniformly to all patrons, there is no reason to fear legal challenge. Furthermore, if there is a valid basis for the suspicion

of illegal activity, library staff should feel confident in inquiring about the patron's use of the library computers and reminding the patron about copyright laws.

Pursuant to the Copyright Act of 1976, the unauthorized reproduction of copyrighted material for resale is illegal.⁴² The Copyright Act does provide an exemption for a library when its equipment is utilized to infringe upon a copyright. Section 108(f) states:

Nothing in this section shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises:

Provided,

That such equipment displays a notice that the making of a copy may be subject to the copyright law.

Thus, in order to avoid liability for contributory infringement, the library should display a copyright notice on computers in the same manner as on the library's photocopier.⁴³ Of course, the suspicion by library staff that the patron is utilizing the library's equipment to illegally reproduce commercial DVDs raises the question of whether the use can now be considered "unsupervised." Therefore, it is advisable for the library to make inquiry into the patron's use of its equipment as discussed above.

Library staff may hesitate to question the patron about his or her activities in the name of patron privacy, which is considered an essential element of library service.⁴⁴ The Code of Ethics and Bill of Rights of the American Library Association (ALA) provides, "We protect each library user's right to privacy and confidentiality with respect to information sought or received, sources consulted, borrowed, acquired, or transmitted."⁴⁵ These privacy rights, however, are not absolute and may be outweighed by the legitimate need to assure that the library and its equipment are not being used in furtherance of illegal activity. In addressing questions about

privacy policies, ALA has stated, “Clear evidence of illegal behavior is best referred to law enforcement who know the processes of investigation that protect the rights of the accused.”⁴⁶

Q5: What if a patron is scanning in porn and sending to a friend?

A library policy prohibiting the use of library equipment for illegal activity will preclude this activity. It is a violation of Federal law to use an interactive computer service, in or affecting interstate commerce, for the purpose of sale or distribution of any obscenity.⁴⁷ The Internet is a method of communication between states and, as such, has been held to affect interstate commerce. The patron’s act of sending the scanned images is a distribution. Therefore, if the images meet the definition of obscenity,⁴⁸ use of the library computer to access the Internet and send the images is an illegal activity.

Depending on the source of images the patron is scanning, it is possible that there are copyright issues as well. For example, if the patron is scanning images from a commercial magazine in violation of copyright protections, his use of the scanner to reproduce the images would also be in breach of the library’s policy prohibiting use of library equipment for illegal activity, as discussed above.

This raises the question of why the magazine, if it is in fact obscene, can be sold in the first place. The answer lies in the choice of local authorities to not enforce the Federal statute preventing the sale of obscene materials. Regardless of whether the statute prohibiting the sale and distribution of obscenity is regularly enforced, it remains valid law and can be relied upon in the enforcement of a library policy precluding illegal activity.

Q6: Can a progressive discipline policy be implemented in order to address a patron’s repeated inappropriate behavior in the library? In other words, is the library required to begin each day with a clean slate even when the same patron becomes problematic repeatedly?

The form and substance of the disciplinary policies are up to individual libraries. There is no legal requirement that the library give repeat offenders a fresh start with each day. It would be advisable to include a progressive disciplinary plan within the library's policy. This will give the library the flexibility to impose a punishment that will further its overall mission.

When the legal principals discussed above are observed, the library is free to impose punishment that it determines is reasonable and appropriate under the circumstances. Except in extreme cases such as forever banning a person from using a library "for a single instance of misconduct no matter how minor," courts generally uphold disciplinary polices related to patron conduct in public libraries.⁴⁹

Chapter 3

Debt Collection by Public Libraries

Unfortunately, overdues are a fact of life in public libraries. According to the PINES' libraries overdue report for February 2010, 1,065,309 items were overdue. The imposition of fines is a common practice to encourage the timely return of library materials. Many libraries turn overdue accounts over to collection agencies.⁵⁰ A public library in Tennessee even published the names of its patrons with overdues along with the titles of items borrowed.⁵¹

The following questions demonstrate the legal issues that arise when the library must take steps to collect debts.

Q7: Is there a statute of limitation on the collection of overdue fines?

Yes, six years. Overdue fines arise from a breach of the contract between the library and the patron for the borrowing of library materials. Therefore, the library's right to bring a legal action to collect these fines is governed by Georgia's limitation period for contracts. The applicable statute provides: "All actions upon simple contracts in writing shall be brought within six years after the same become due and payable."⁵²

Presumably, the library has obtained the patron's signature agreeing to the library's terms regarding the borrowing of library materials. This instrument is the written contract between the parties. While different libraries may have differing terms, the fundamental agreement between library and patron is that the library will allow the patron to borrow its materials and the patron agrees to return the materials by the due date. Failure to return the books by the appointed due date is a breach of the contract. Thus, the six-year time period begins to run on this first day the materials are overdue.

Under Georgia law, the statute of limitation runs from the time the contract is broken and not from the time the actual damage results or is ascertained.⁵³ Therefore, the fact that overdue fines continue to accrue until the materials are returned does not extend the limitation period. The actual breach of duty is the failure to return the books on time. The overdue fees are a form of “liquidated damages,” which is an amount of money that has been stipulated by the parties to a contract as the amount to be recovered in the event of a breach.⁵⁴

It is important to note that a statute of limitation bars legal action. It does not bar all forms of collection efforts. Therefore, a library is not prohibited from contacting a patron who owes fines from six plus years ago and requesting that the fines be paid. This request is just that, a request. It should not be accompanied by a threat of legal action. There is nothing to prevent a library, however, from suspending borrowing privileges or refusing to enter into a new contract with a patron who has outstanding fines for overdue materials regardless of when the cause of action accrued.

Q8: Can juvenile accounts be sent to a collection agency?

Q9: If a user incurs fines, fees, and bills before he / she turned 18, can these amounts be collected after the user turns 18?

Q10: If the original patron registration form contains a parent's signature, who is liable? The parent or the named user who is now 18 years old?

As an initial matter, it is important to recognize that under Georgia law, a person under the age of 18 does not have the capacity to enter into a valid contract.⁵⁵ Thus, a contract to which a minor is a party is voidable.⁵⁶ The term “voidable” means that the minor may elect to ratify or void the contract upon reaching the age of majority.⁵⁷ Therefore, a party contracting with a minor is at a distinct disadvantage as the contract may be enforceable only should the

minor consent. The Georgia legislature has carved out certain exceptions to this general rule. For instance, a person of any age who borrows and agrees to repay student loans is liable under the contract.⁵⁸ However, there is no such exception applying to library card agreements. Furthermore, the parent of a minor child is not liable for debts incurred by this child unless the debt is for certain necessities that the parent has failed to provide to the child.⁵⁹ Because library materials are not of the type of item considered “necessities” by courts, without express agreement by the parent, he or she will not be liable for the child’s debts to the library.

Fines and fees incurred before a patron is of the legal age to enter into a contract will not be collectable in a court of law unless the patron consents to the responsibility after reaching age 18. This is true even if collection efforts begin after the patron turns 18. Accordingly, libraries should always contract with a minor’s parent or guardian to be legally responsible for the child’s account at least until the child becomes 18.

If the library has an agreement with the parent to be legally responsible for the child’s account, then there is no problem turning that account over to a collection agency. While the library card may be in the name of a juvenile, the legal responsibility for that account falls on the parent, and it is the parent who will be the target of collection.

In situations where a library card was issued to a minor, but that person is now over the age of 18, the library may be successful in collection efforts against the now 18 year old but only for activity that occurred after the patron turned 18. Under Georgia law, a person who, after turning 18, continues to enjoy the benefit of a contract executed when he was a minor, ratifies the contract and becomes liable under its terms.⁶⁰ In other words, if a patron under the age of 18 agrees to certain borrowing terms with the library and breaches those terms before turning 18,

he or she could not be held accountable in court. However, if that same patron continues to use his library card to borrow materials after the age of 18, any breach of the borrowing agreement that occurred after the 18th birthday would be actionable.

Whether a parent who is a signatory to a minor's library account is responsible for payment of fines depends entirely upon the language of the agreement. A parent, or any person over the age of 18, may agree to be legally responsible for the debts of another person. Therefore, if the library card agreement for the child stated that the signature of the parent represents the parent's agreement to be responsible for paying for fines incurred by the child, the contract is with the parent, and the parent is liable for those debts regardless of the age of the child. However, if the language of the library card application states that the parent agrees to be liable for the account until the child is of legal age, then the parent is responsible only for breaches that occurred prior to age 18.

These examples demonstrate the need for the library to carefully draft its borrowing agreements. When the patron is under 18, the agreement should be with both minor and parent. Under this scenario, the library may hold the parent liable for any fines resulting from activity before the child turns 18 and then hold the child liable for activity that occurs after he or she becomes 18.

Chapter 4

Employment Issues

During Fiscal Year 2009, public libraries in Georgia employed 3,105 people,⁶¹ and as a result managers in Georgia's libraries must be ready to deal with employment law issues. As a general matter, Georgia is an at-will employment state,⁶² which means that absent an employment contract, the employee can be terminated at any time without reason or for any reason so long as it is not an illegal reason such as discrimination or whistle blowing.⁶³ Despite this doctrine giving employers wide latitude in making business decisions, employers in Georgia face a myriad of legal issues arising in the employment context including immigration status, employee benefits, and compliance with federal discrimination statutes. The following questions and answers provide some guidance on these topics.

Q11: Does the regulation requiring that public employers hire no illegal aliens apply to volunteers as well? Should public libraries be screening to be assured that community service workers are not illegal immigrants?

Q12: Does the state law that requires institutions funded with state money to ensure that contractors and their subcontractors do not have illegal aliens on their payroll apply to contracts that public libraries have with major book vendors, office supply vendors, copier repair vendors, etc?

In 2006, the State of Georgia enacted the Georgia Security and Immigration Compliance Act ("GSICA"), a comprehensive bill aimed at prohibiting public employers from hiring illegal immigrants. For purposes of GSICA, a "public employer" is every department, agency, or instrumentality of the state or a political subdivision of the state.⁶⁴ Pursuant to O.C.G.A. § 20-5-40, public library systems are local units of administration that have been created through participating agreements among city and county governments. Thus, the public libraries within the state of Georgia are "public employers" and are governed by GSICA.

First, GSICA requires that all public employers verify employment eligibility of all newly hired employees through participation in a Federal work authorization program.⁶⁵ While the act does not specifically define “employee,” Federal immigration regulations related to employment eligibility apply only to individuals who perform work in exchange for remuneration.⁶⁶ Therefore, volunteers are not “employees”⁶⁷ and do not likely fall within the purview GSICA. Thus, there would be no requirement to verify employment eligibility in the context of immigration status for these individuals.

Second, GSICA requires that public employers may enter into contracts for the performance of physical services only with contractors that are enrolled in a federal work authorization program to verify the status of its employees.⁶⁸ Therefore, GSICA imposes a limitation on a public library when choosing a contractor (or subcontractor) for the performance of physical services. Because the law specifically states that it applies to contracts for the “physical performance of services,” however, GSICA does not appear to apply to contractors who only provide goods.⁶⁹ Accordingly, booksellers, software vendors, and other suppliers of goods would not fall within GSICA. But, copier repair or other maintenance work is within the category of “physical performance of services” and would, therefore, trigger the requirements of GSICA. For more information about obtaining the proper documentation from contractors in order to comply with GSICA, review Georgia Department of Labor’s rules for Chapter 300-10-1, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program" (http://www.dol.state.ga.us/pdf/rules/300_10_1.pdf).

Q13: Are there potential liability issues with transferring an employee to another job of “equal status”?

A job transfer that amounts to an adverse employment action motivated by race, gender, religion, or national origin violates Title VII of the Civil Rights Act.⁷⁰ Librarians employed by the Atlanta-Fulton Public Library System who were transferred because of race from jobs at the central library to what were perceived to be dead-end jobs in branch libraries successfully sued the library system and won approximately \$17 million.⁷¹ Therefore, it is important for library managers to carefully evaluate employment decisions.

In determining whether an employment transfer is adverse, courts consider whether an objectively reasonable employee would view the transfer as unfavorable.⁷² The objective factors that are important are whether the transfer results in reduction in pay, loss of prestige, or diminishment of responsibilities.⁷³ “A lateral transfer that does not result in lesser pay, responsibilities, or prestige is not adverse.”⁷⁴ Moreover, the employee’s subjective dislike of the transfer is not a factor in analyzing whether the action is adverse.⁷⁵ Therefore, if the job to which the employee is transferred would be perceived by a reasonable employee as being equal in pay, responsibility level, and prestige, there is no potential liability under Title VII.

Additionally, an employer may take adverse action against an employee unless the action is for a discriminatory reason. An employment decision that is made on the basis of race, color, religion, sex, national origin, disability, or age is illegal.⁷⁶ On the other hand, an employer is free to make employment decisions on legitimate factors such as job performance, absenteeism, insubordination, etc.

In order to substantiate that a decision was based upon a legitimate factor rather than an illegal one, an employer must maintain documentation.⁷⁷ Regular employee evaluations should be conducted and, in the event that an employee is not meeting expectations, the employee

should be informed both in person and in writing and given a reasonable period of time to correct his or her actions. Taking these steps is important in the event the employee later makes a discrimination claim.

Q14: Under what circumstances can the library avoid paying unemployment when an employee voluntarily leaves his/her job? A library employee who worked as the maid learned she was allergic to dust and quit voluntarily. The library fought the claim for unemployment benefits and lost. Why?

Georgia law requires employers to set aside unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.⁷⁸ According to Georgia's Department of Labor, an individual who quits his job may still be eligible for unemployment benefits if he quit for a "good work-related reason."⁷⁹

The Georgia Department of Labor has a rule that precisely defines under what circumstances an employee who voluntarily quits may be eligible for unemployment benefits.

The rule provides:

(1) An employee who voluntarily quits is to be disqualified unless he/she can show that the employer had changed the terms and conditions of work in a manner that the employee, applying the judgment of a reasonable person, would not be expected to continue that employment. Factors which the Commissioner shall consider in making this determination may include, among others, the following:

- (a) Whether the employee was downgraded for reasons other than the fault of the claimant;
- (b) Whether the employee had undergone harassment on the job of a substantial nature which would induce a reasonable person to quit in order to seek other employment;
- (c) Whether the hiring contract had otherwise been broken in a material way;
- (d) An economic downgrade based on the employer's inability to continue the former salary will not be considered as a good cause to quit if the reduction in

salary is not a substantial reduction below a reasonable rate for that industry or trade. However, a seasonal or temporary reduction in pay or work hours does not constitute good cause for quitting; or

(e) Whether the employee's health was placed in jeopardy by conditions on the job. There must be some clear connection between the health problem and the performance of the job, and professional medical advice is required unless the reason would be obvious that harm to the employee would result from continued employment. This includes such obvious things as broken limbs, violent reactions such as allergies due to the environment on the job and similar circumstances. Provided, however, the employee must discuss the matter with the employer to seek a solution by another assignment or other changes that would be appropriate to relieve the medical problem before the employee can show good work-connected cause for quitting.

(2) Disqualification is not required if an employee quits because the rules of the employer prove to be unreasonable as related to proper job performance.

(3) In situations in which it is not clear whether a quit or a discharge occurred to cause the separation, the burden of persuasion shall be on the employer to show that a quit rather than a discharge occurred. If the employer meets this burden of persuasion, then the burden of proof is then placed on the claimant to show that the quit was for good cause connected with the work. If the employer fails to meet this burden of persuasion, the separation shall be treated as a discharge and the burden of proof of just discharge shall be on the employer.

(4) When an individual accepts a separation from employment due to lack of work, pursuant to a labor management contract or agreement, or pursuant to an established employer plan, program, policy, layoff, or recall, the Commissioner will determine eligibility based on the individual circumstances of the case. In such cases, to show that the individual quit for good cause connected with the most recent work the facts must demonstrate at minimum:

(a) That the individual was advised of an actual impending layoff with a date certain, and

(b) That the effective date of the layoff was no more than six (6) months after the announcement date.⁸⁰

Based upon this rule, an employee who develops an allergy to something that is necessarily encountered in the workplace would be eligible for unemployment benefits even if he

or she voluntarily quits the job. The employee would likely be required by the Department of Law to support her claim of allergy with medical opinion(s). Assuming, however, the employee has a legitimate medical condition, the employer would be unable to avoid paying the unemployment benefits.

Q15: What are the guidelines for whether an employee can be considered a contract employee and therefore exempt from TRS and GHI contributions? Would a library delivery van driver fall into the category of contract employee even if he or she works more than 17.5 hours per week?

The threshold issue here is whether the delivery van driver is an employee or an independent contractor. The distinction between employee and independent contractor is crucial because the applicable laws are totally different for each.⁸¹ The following chart is useful in making this determination.

	<u>Employee</u>	<u>Independent Contractor</u>
How is the worker paid?	Salary, Hourly	Per Job
Do work hours vary as workload demands?	No	Yes
Who sets worker's schedule?	Library	Worker
Who owns the delivery vehicle?	Library	Worker
Who pays for gas/vehicle maintenance?	Library	Worker
Is worker allowed to perform delivery for other businesses?	No	Yes
Permanence of relationship?	Ongoing expectation of work	Called when needed

The State of Georgia established the Teachers Retirement System of Georgia (“TRS”) for the purpose of providing retirement allowances.⁸² Employees of the state’s regional and county libraries are considered “teachers” for purposes of membership in TRS.⁸³ Georgia law requires

any person who became a “teacher” after 1944 to be a member of TRS as a condition of employment.⁸⁴ According to the TRS Website, however, employees who work less than 20 hours per week or less than half of the working days in a calendar month are considered temporary employees and are not eligible for membership in TRS.⁸⁵ Also, there are certain jobs that are not included in TRS regardless of hours worked. For example, school bus drivers, maintenance employees, cafeteria workers, and custodial staff are not eligible for membership in TRS.⁸⁶ These employees are eligible for membership in their own retirement system.⁸⁷ Therefore, if the delivery van driver is an employee and works 20 hours per week or more, he or she will be eligible for membership in TRS unless there is some other state retirement system applicable to him. On the other hand, if the driver is an independent contractor or works less than 20 hours per week, he or she is not eligible for participation in TRS.

County and regional library employees who work at least 17.5 hours per week are eligible for coverage under the State Health Benefit Plan (“SHBP”).⁸⁸ This eligibility does not apply to an independent contractor.⁸⁹ Therefore, if the delivery van driver is an employee and works more than 17.5 hours per week, he or she is eligible for coverage under SHBP; if he or she is an independent contractor or works less than 17.5 hours per week, he or she is not eligible for this benefit.

Q16: Is it legal for a camera security system to record library employees while at work?

The Fourth Amendment of the United States Constitution protects against undue government intrusions both in civil and criminal settings, even safeguarding individuals against the government as an employer.⁹⁰ In *O'Connor v. Ortega*,⁹¹ the United States Supreme Court determined that “a public employee sometimes may enjoy a reasonable expectation of privacy in

his or her workplace vis-a-vis searches by a supervisor or other representative of a public employer.” Video surveillance of library employees therefore is Constitutional only if the camera is recording areas where an employee would have no expectation of privacy. For example, the First Circuit Court of Appeals held that employees lacked an objectively reasonable expectation of privacy against disclosed, soundless video surveillance while working in an open work area.⁹² On the other hand, police officers in California successfully sued under the Fourth Amendment when they were subjected to secret video camera surveillance in their locker room.⁹³

Based upon the above examples, a library may certainly install a security camera that will record employees in the workplace but not if the camera records an area where the employee has a reasonable expectation of privacy. Therefore, cameras in break rooms or restrooms would likely not pass Constitutional muster; but recording the open work area is allowed, particularly if the employees are informed of the camera.

Chapter 5

General Liability Issues

A public library's exposure to legal liability is impossible to avoid completely. Lawsuits may come from a patron who is injured on the library premises, a dissatisfied employee, a parent wishing to challenge a particular book, special interest groups who oppose library policies, or a vendor claiming breach of contract. What is important is that library managers recognize the potential for liability and take steps to minimize the risk by making informed decisions on critical issues. The questions and answers below address inquiries about aspects of liability faced by public libraries in Georgia.

Q17: How much, or far, does sovereign immunity protect a library system from liability and when is the veil of protection pierced? Does sovereign immunity protect decisions made by the public library director and library board members?

Pursuant to the doctrine of sovereign immunity, the state cannot be sued without its consent.⁹⁴ Sovereign immunity extends to the state and all of its departments and agencies, including counties.⁹⁵ Thus, state entities such as public libraries and their employees are entitled to sovereign immunity unless the immunity is specifically waived by a statute setting forth the extent of the waiver.⁹⁶

Georgia has enacted the Tort Claims Act, which contains a limited waiver of sovereign immunity. The waiver provides:

The state waives its sovereign immunity for the torts of state officers and employees while acting within the scope of their official duties or employment and shall be liable for such torts in the same manner as a private individual or entity would be liable under like circumstances; provided, however, that the state's sovereign immunity is waived subject to all exceptions and limitations set forth in this article. The state shall have no liability for losses resulting from

conduct on the part of state officers or employees which was not within the scope of their official duties or employment.⁹⁷

Additionally, the State of Georgia has waived sovereign immunity for contract claims.⁹⁸

Therefore, sovereign immunity will not bar suits against the library system or its employees and board members acting in the scope of employment as to torts or contract claims arising from their official duties.

The doctrine of official immunity may protect library employees and board members who are sued for claims arising under state law. Official immunity is limited to state law claims for harm that results from the exercise of the employee's discretionary duties.⁹⁹ In other words, public officials or employees are immune from liability from state law claims arising from discretionary acts undertaken in the course of their duties, done without willfulness, malice, or corruption.¹⁰⁰ It is important to note that ministerial acts are not covered by official immunity. "A ministerial act is commonly one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty. A discretionary act, however, calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed."¹⁰¹

Also, the doctrine of qualified immunity provides that government officials performing discretionary functions are generally shielded from liability for damages in actions under 42 U.S.C. § 1983, provided their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.¹⁰² The qualified immunity doctrine is intended to "strike a balance between compensating those who have been injured by official action and protecting the government's ability to perform its traditional

functions.”¹⁰³ Qualified immunity is similar to official immunity, the crucial distinction being to which claims it is applicable: qualified immunity shields government officials from claims arising under the United States Constitution or other Federal statutes as opposed to official immunity, which bars claims against government officials brought under state law.

While these immunities are valuable to governmental entities and their employees, they do not prevent lawsuits. These doctrines serve as defenses to be raised in the event of a lawsuit. Therefore, even though one of the immunities discussed above may be applicable and mean that the library, employee, or trustee will ultimately prevail in the suit, there is still the cost and aggravation of litigating the suit until the claims are dismissed by a court.

Q18: What is the extent of trustee liability?

The duties and responsibilities of boards of trustees are set forth by statute.¹⁰⁴ These responsibilities include employing a library director, setting policy for the library, and presenting financial reports to governing authorities and the public. To the extent that a board member fails to uphold his or her duties, the likely result would be removal from the board. If a board member engages in criminal conduct, such as embezzlement of library funds, he or she would be subject to prosecution by state authorities.

With regard to civil liability for claims arising on library property or involving library employees, members of the board of trustees for the public library are often named as defendants. These individuals would, however, be entitled to raise official and qualified immunity as discussed in Question 17.

Q19: What is the library’s responsibility with regard to minors left on library property after the library closes?

There is no law in Georgia (or any other state) that imposes a responsibility upon public library employees for unattended children remaining on library property after closing.¹⁰⁵

Georgia state courts have recognized that a school official stands *in loco parentis* to a student under his authority.¹⁰⁶ This role has not been extended to public library employees.

Despite the absence of legal responsibility for children remaining on the library premises after closing, libraries should have a policy in place to address this situation. In creating this policy it will be important for library staff to know about and follow any local regulations that may apply. For example, the City of San Marino, California, enacted the following ordinance.

14.08.04: RESTRICTIONS ON UNATTENDED MINORS AT PUBLIC LIBRARY:

A. Purpose And Intent: This section is intended to implement section 625.5 of the Welfare and Institutions Code, which authorizes the governing body of a city, by ordinance, to prohibit minors from remaining in or upon public places unsupervised after hours. The purpose of this section is to encourage parents and legal guardians to exercise reasonable care, supervision, and control over their minor children in order to prevent juvenile victimization and to protect the health, safety, and welfare of children.

B. Unattended Minors At The Public Library: Notwithstanding the provisions of subsection 14.08.01A of this article, it is unlawful for any minor who is twelve (12) years of age or younger to be and remain upon the grounds of the public library for more than one-quarter (1/4) hour after the closing hour of the library, as established by the city council, unless one of the exceptions set forth in subsection 14.08.01D of this article is applicable to that minor.

Likewise, the City of Virginia Beach, Virginia, has promulgated an administrative directive that specifies the precise steps to be taken when a child under the age of 16 is left at the library after normal programming hours, including billing parents who repeatedly fail to pick up their children in a timely fashion. The full text of the administrative directive is available at <http://blog.librarylaw.com/librarylaw/files/11-VaBeachUnattended.mht>.

If there is no applicable regulation to be used as guidance, looking to other libraries' policies may be helpful. A good example is that of the public library in Jacksonville, Florida, which states:

Closing Time: Children who do not have transportation home at closing time will be asked for telephone numbers of people who can pick them up at the library. Based on the age of the child, if a child is not picked up within 15 minutes of closing, library staff is required to call Youth Crisis Center (YCC)/Safe Place for children aged 10-17 or JSO for children under age 10. If a child (ages 10-17) is not picked up at closing, library staff will call the YCC/Safe Place. For children under 10, a direct call to JSO for pickup will be made. Staff is empowered to stay with children until they are picked up.

(Complete text of this policy is available at <http://jpl.coj.net/lib/unattendedchild.html>).

Another example is from the Cherokee Regional Library in Georgia:

Unattended Persons after Closing Time

Parents, legal guardians, and caregivers are responsible for being aware of the times the Library opens and closes. Library staff must exercise appropriate procedures to ensure the safety of unattended persons, either minors 17 years of age and younger or dependent persons of any age, especially when the library is closing.

One half hour prior to closing time, staff will make an effort to ascertain that any minors or dependent persons of any age have arrangements for transportation from the library.

If no ride has arrived by closing time, staff will call the Police Department. Police and staff together will monitor persons left unattended until transportation arrives.

Staff will record the parent's, legal guardian's, or caregiver's name, address, and telephone number and the name of the unattended person.

Staff will refer any additional incidents to law enforcement.

Under no circumstances will library staff members provide transportation to unattended minors or dependent persons, or leave them alone in the building or on the library premises.

The complete text of this policy and other policies of Georgia libraries are available at

<http://ga.webjunction.org/694/-/articles/content/14362870>.

Q20: Does the library have a duty to screen volunteers for registered sex offenders?

For purposes of liability, a library volunteer is equivalent to a library employee.¹⁰⁷

An employer may be held liable for injuries caused by an employee when there is sufficient evidence to establish that the employer reasonably knew or should have known of an employee's tendencies to engage in certain behavior relevant to the injuries sustained.¹⁰⁸ Thus, placing a volunteer who is registered sex offender in the public library could result in liability if that volunteer sexually assaults a patron or a library employee. While criminal background checks for applicants at a child care center are mandatory,¹⁰⁹ this is not so for hiring libraries. Nonetheless, conducting criminal background checks on both volunteers and employees who apply for positions in the public library is advisable. At the very least, the hiring committee should check the national sex offender registry, which is available at <http://www.nsopw.gov/Core/PublicRegistrySites.aspx>.

Chapter 6

Board of Trustees and Friends of the Library

Trustees

Georgia law requires that public libraries in this state be governed by boards of trustees.¹¹⁰ The legislature has enacted statutes that (1) establish how members of boards are chosen and their terms of service,¹¹¹ (2) delineate the duties and responsibilities of boards,¹¹² and (3) prohibit compensation to board members with the exception of reimbursement of any expenses incurred in library business.¹¹³

In order to be eligible for state funding, public library boards must meet a minimum of four times per year and maintain official minutes of meetings.¹¹⁴ Meetings of library boards of trustees are required to be open to the public.¹¹⁵ With today's advances in technology, it is possible to convene a meeting without the physical presence of members, but boards must be certain to comply with all requirements to assure that meetings are valid.

Q21: May board members attend meetings via conference call? Should this be addressed in the by-laws?

According to Georgia law,

Unless specifically prohibited by the laws relating to a particular board, body, or committee, any board, body, or committee of state government may meet by teleconference or other similar means. The methods of meeting permitted under this Code section shall include telephone conference calls, meetings held through two-way interactive closed circuit television or satellite television signal, or any other similar method which allows each member of the board or body participating in the meeting to hear and speak to each other member participating in the meeting.¹¹⁶

While library boards are not specifically a part of state government, public libraries in Georgia are treated as state entities in several respects. For example, the Board of Regents of the

University System of Georgia oversees funding, both state and Federal, for public libraries and is responsible for coordinating interlibrary loan among the libraries of the state.¹¹⁷ Additionally, public library employees participate in the state-wide Teachers Retirement System¹¹⁸ and the State Health Benefit Plan.¹¹⁹ Moreover, the statute permitting meeting by teleconference states that its provisions “shall be broadly construed to cover any board, body, or committee of state government which is required or authorized to hold any meeting concerning state government affairs, regardless of the name by which any such entity may be known.”¹²⁰ Therefore, this code section is applicable to public library board meetings.

Including reference to this code section in the board’s by-laws would be a good idea because it would alert board members that this option of participation is available as well as put the public on notice that meetings may be conducted in this manner. Absence of this reference in the by-laws, however, does not change the legality of meeting via teleconference because the legislature has specifically approved this method of meeting.

Friends

Fundraising for public libraries is usually conducted by a Friends of the Library group. This could be a single event to generate funds for a specific item for the library or an ongoing major campaign to assist the library with large expenditures.¹²¹

Q22: Does a Friends of the Library group have to collect sales tax on books sold in a used book sale if the proceeds are given to the public library? What about sale of items in a small store that is specifically run by the Friends and not the library? Are there any thresholds?

Pursuant to Georgia law, “sales to or by an organization whose primary purpose is to raise funds for books, materials, and programs for public libraries when qualifying as nonprofit

by the Internal Revenue Service” are exempted from payment or collection of sales tax.¹²² The organization must apply for this exemption by letter to the Georgia Department of Revenue.

To qualify as a non-profit under the regulations of the Internal Revenue Service (“IRS”), the group must (1) be organized exclusively for charitable, religious, educational, scientific, or literary purposes; (2) meet organizational and operational tests; (3) not make payments to private individuals beyond reasonable costs for goods and services; and (4) follow IRS restrictions on lobbying.¹²³ The organizational test requires the use of key provisions within the articles of incorporation regarding activities for an exempt purpose and the dedication of corporate assets. The operational test requires that the organization engage only in activities intended to accomplish one or more of the purposes set out in subsection one.

A Friends of the Library group is not automatically afforded Section 501(c)(3) status; the organization must apply in writing to the IRS.¹²⁴ For more information on the application process see IRS Publication 557, *Tax Exempt Status for Your Organization* (<http://www.irs.gov/pub/irs-pdf/p557.pdf>).

NOTES

Chapter 1

¹ Lee Ann Torrans, *Law and Libraries* (Westport, CT: Libraries Unlimited, 2004), 153.

² O.C.G.A. § 42-1-12(a)(3).

³ O.C.G.A. § 16-36-11.

⁴ *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242 (3d Cir. 1992).

⁵ *Ibid.* at 1264.

⁶ *Ibid.*

⁷ Ibid.

⁸ *Beard v. Banks*, 548 U.S. 521 (2006).

⁹ *Turner v. Safley*, 482 U.S. 78, 89 (1987).

¹⁰ Paul T. Jaeger and Zheng Yan, “One Law with Two Outcomes: Comparing the Implementation of CIPA in Public Libraries and Schools,” *Information Technology & Libraries* 28(1) (March 2009): 8.

¹¹ Larissa Piccardo, “Filtering the First Amendment: The Constitutionality of Internet Filters in Public Libraries under the Children’s Internet Protection Act,” *Houston Law Review* 41 (2004): 1440.

¹² 20 U.S.C. § 9134(f)(1)(A)(i) and (B)(i); 47 U.S.C. § 254(h)(6)(B)(i) and (C)(i).

¹³ *United States v. American Library Association, Inc.*, 539 U.S. 194 (2003).

¹⁴ *Ibid.* at 206.

¹⁵ *Bradburn v. North Central Regional Library District*, Civil Action No. 2:06-CV-00327-EFS (E.D. Wa. 2006).

¹⁶ *Hewlett-Woodmere Public Library v. Rothman*, 108 Misc.2d 715, 438 N.Y.S.2d 730 (N.Y. Dist. Ct. 1981).

¹⁷ *Miller v. California*, 413 U.S. 15 (1973).

¹⁸ *Ibid.* at 24-25.

¹⁹ *Ibid.* at 30.

²⁰ O.C.G.A. § 16-12-80.

²¹ DeKalb County Public Library Board of Trustees, “Internet Use Policy,” DeKalb County Public Library, <http://www.dekalblibrary.org/policies.html#internet> (accessed February 16, 2010).

Chapter 2

²² Kreimer, 958 F.2d at 1262.

²³ O.C.G.A. § 20-5-1.

²⁴ Kreimer, 958 F.2d at 1262.

²⁵ Torrans, 237.

²⁶ Kreimer, 958 F.2d at 1262.

²⁷ Kathleen de la Pena McCook, *Introduction to Public Librarianship* (New York: Neal-Schuman, 2004), 83.

²⁸ *Brown v. Louisiana*, 383 U.S. 131, 142 (1966).

²⁹ *Ibid.* at 159-60.

³⁰ Kreimer, 958 F.2d at 1261.

³¹ *American Library Association, Inc.*, 539 U.S. at 203.

³² Torrans, 240.

³³ *Ibid.*

³⁴ *Sewell v. Georgia*, 435 U.S. 982, 986 (1978).

³⁵ *Cheek v. United States*, 498 U.S. 192, 199 (1991).

³⁶ Torrens, 240.

³⁷ *Wayfield v. Town of Tisbury*, 925 F.Supp. 880 (D. Mass. 1996).

³⁸ *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

³⁹ *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

⁴⁰ *Goss v. Lopez*, 419 U.S. 565, 579 (1975).

⁴¹ *Neinast v. Board of Trustees of Columbus Metropolitan Library*, 346 F.3d 585, 598 (6th Cir. 2003).

⁴² 17 U.S.C § 106.

⁴³ 37 C.F.R. 201.14.

⁴⁴ *Torrens*, 29.

⁴⁵ American Library Association Code of Ethics, art. 3,

<http://www.ala.org/ala/aboutala/offices/oif/statementspols/codeofethics/codeethics.cfm>.

(accessed March 22, 2010).

⁴⁶ American Library Association, "Questions and Answers on Privacy and Confidentiality"

<http://www.ala.org/ala/aboutala/offices/oif/statementspols/statementsif/interpretations/questionsanswers.cfm> (accessed March 22, 2010).

⁴⁷ 18 U.S.C. § 1465.

⁴⁸ For a discussion of what material is considered obscene, see Chapter 1.

⁴⁹ *Brinkmeier v. City of Freeport*, 1993 WL 248201, *5 (N.D. Ill. July 2, 1993).

Chapter 3

⁵⁰ Maggie Sieger, "Your Friendly Local Library?" *Time* August 29, 2005, 23.; *Illinois Library Association Reporter*. In the News. "Library Checks Out Collection Agency." April 2004, 24.

⁵¹ Wayne Wiegand, "This Month, 85 Years Ago." *American Libraries* 33, no. 10 (2002): 74.

⁵² O.C.G.A. § 9-3-24.

⁵³ National Hills Shopping Center, Inc. v. Insurance Co. of North America, 320 F.Supp. 1146 (S.D. Ga. 1970).

⁵⁴ *Black's Law Dictionary*, 6th ed., s.v. "liquidated damages."

⁵⁵ Jones v. State, 166 S.E.2d 617 (Ga. Ct. App. 1969).

⁵⁶ O.C.G.A. § 13-3-20(a).

⁵⁷ Clemons v. Olshine, 187 S.E. 711 (Ga. Ct. App. 1936).

⁵⁸ O.C.G.A. § 20-3-287.

⁵⁹ Wilkins v. Barnes, 75 S.E. 361 (Ga. Ct. App. 1912).

⁶⁰ O.C.G.A. § 13-3-20(a).

Chapter 4

⁶¹ Georgia Public Library Service, "A Current Look at Georgia's Public Libraries and GPLS," Feb. 2010, p. 1, http://www.georgialibraries.org/lib/publiclibinfo/CurrentLook2010_A.pdf (accessed April 11, 2010).

⁶² Balmer v. Elan Corp., 599 S.E.2d 158, 163 (Ga. 2004).

⁶³ Bryan Carson, *The Law of Libraries and Archives* (Lanham, MDT: Scarecrow Press, 2007), 267.

⁶⁴ O.C.G.A. § 13-10-90(3).

⁶⁵ O.C.G.A. § 13-10-91(a).

⁶⁶ U.S. Department of Homeland Security, Citizenship and Immigration Services, *Handbook for Employers Instructions for Completing Form I-9 (Employment Eligibility Verification Form)* (rev'd July 31, 2009), 5, <http://www.uscis.gov/files/form/m-274.pdf> (accessed April 10, 2010).

⁶⁷ Arlene C. Bielefield, *Library Employment Within the Law* (New York: Neal-Shuman 1993), 101.

⁶⁸ O.C.G.A. § 13-10-91(b).

⁶⁹ Mark J. Newman and Hon-Vinh Duong, “The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia—‘Think Globally....Act Locally,’” *Georgia Bar Journal* 13: 4 (2007): n.22.

⁷⁰ 42 U.S.C. § 2000e.

⁷¹ *Bogle v. McClure*, 332 F.3d 1347 (11th Cir. 2003).

⁷² *Doe v. DeKalb County School District*, 145 F.3d 1441, 1448-49 (11th Cir. 1998).

⁷³ *Ibid.* at 1448.

⁷⁴ *Barnhart v. Wal-Mart Stores, Inc.*, 206 Fed.Appx. 890, 893 (11th Cir. 2006).

⁷⁵ *Doe*, 145 F.3d at 1452.

⁷⁶ *Carson*, 286.

⁷⁷ *Torrans*, 23.

⁷⁸ O.C.G.A. § 34-8-2.

⁷⁹ Georgia Department of Labor, *Claimant Handbook: Unemployment Insurance*, 6. <http://www.dol.state.ga.us/pdf/forms/dol414.pdf> (accessed April 3, 2010).

⁸⁰ Georgia Department of Labor Rule 300-2-9-.05 http://www.dol.state.ga.us/pdf/rules/300_2_9.pdf (accessed April 3, 2010).

⁸¹ *Carson*, 265.

⁸² O.C.G.A. § 47-3-20.

⁸³ O.C.G.A. § 20-2-880(4).

⁸⁴ O.C.G.A. § 47-3-60(a).

⁸⁵ Teachers Retirement System of Georgia, <http://www.trsga.com/employers/educate-yourself/trs-membership-eligibility.aspx> (accessed April 3, 2010).

⁸⁶ O.C.G.A. § 47-4-2(20).

⁸⁷ O.C.G.A. § 47-4-2.

⁸⁸ Georgia Department of Community Health, State Health Benefit Plan Rule 111-4-1-.04(1)(b)(2) http://www.georgia.gov/00/channel_title/0,2094,31446711_39854817,00.html (accessed on April 4, 2010).

⁸⁹ Georgia Department of Community Health, State Health Benefit Plan Rule 111-4-1-.04(b) http://www.georgia.gov/00/channel_title/0,2094,31446711_39854817,00.html (accessed on April 4, 2010).

⁹⁰ Vega-Rodriguez v. Puerto Rico Telephone Co., 110 F.3d 174, 179 (1st Cir. 1997) (citing National Treasury Employees Union v. Von Raab, 489 U.S. 656, 665 (1989)).

⁹¹ 480 U.S. 709, 715 (1987).

⁹² Vega-Rodriguez, 110 F.3d at 180.

⁹³ Trujillo v. City of Ontario, 428 F.Supp.2d 1094, 1102 (C.D. Cal. 2006).

Chapter 5

⁹⁴ State Board of Education v. Drury, 437 S.E.2d 290 (Ga. 1993).

⁹⁵ Ga. Constitution, art. I, sec. II, para. IX(e); Waters v. Glynn County, 514 S.E.2d 680, 682 (Ga. Ct. App. 1999).

⁹⁶ Oconee Community Service Bd. v. Holsey, 597 S.E.2d 489 (Ga. Ct. App. 2004).

⁹⁷ O.C.G.A. § 50-21-23.

⁹⁸ Ga. Constitution, art. I, sec. II, para. IX(c).

⁹⁹ Schmidt v. Adams, 438 S.E.2d 659 (Ga. Ct. App. 1993).

¹⁰⁰ Ibid. at 660.

¹⁰¹ Ibid.

¹⁰² Wilson v. Layne, 526 U.S. 603, 609 (1999).

¹⁰³ Wyatt v. Cole, 504 U.S. 158, 167 (U.S. 1992).

¹⁰⁴ O.C.G.A. § 20-5-43.

¹⁰⁵ Mary Minow, *The Library's Legal Answer Book*, (Chicago: American Library Association, 2003), 267-70.

¹⁰⁶ Farmer v. State, 275 S.E.2d 774, 775 (Ga. Ct. App. 1980).

¹⁰⁷ O.C.G.A. § 50-21-22(7).

¹⁰⁸ Harvey Freeman & Sons, Inc. v. Stanley, 378 S.E.2d 857, 858 (Ga. 1989).

¹⁰⁹ O.C.G.A. § 49-5-62.

Chapter 6

¹¹⁰ O.C.G.A. § 20-5-41.

¹¹¹ O.C.G.A. § 20-5-42.

¹¹² O.C.G.A. § 20-5-43.

¹¹³ O.C.G.A. § 50-14-1.

¹¹⁴ Georgia Public Library Service, "Requirements for Public Library State Grant Funds," ¶ 1.5

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<http://www.georgialibraries.org/lib/construction/RequirementsPublicLibraryStateGrant0709.pdf>.

(accessed April 22, 2010).

¹¹⁵ O.C.G.A. § 50-14-1.

¹¹⁶ O.C.G.A. § 50-1-5(a).

¹¹⁷ O.C.G.A. § 20-2-305.

¹¹⁸ O.C.G.A. § 20-2-880(4).

¹¹⁹ Georgia Department of Community Health, State Health Benefit Plan Rule 111-4-1-.04(1)(b)(2) http://www.georgia.gov/00/channel_title/0,2094,31446711_39854817,00.html (accessed on April 4, 2010).

¹²⁰ O.C.G.A. § 50-1-5(c).

¹²¹ Fundraising, Fact Sheet #2 for Friends and Foundations, Association of Library Trustees, Advocates, Friends, and Foundations <http://www.ala.org/ala/mgrps/divs/altaff/friends/factsheets/factsheet2.pdf> (accessed April 24, 2010).

¹²² O.C.G.A. § 48-8-3(71).

¹²³ 26 U.S.C. § 501(c)(3).

¹²⁴ Minow, 325.