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Case Studies: Library Law in Georgia

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Introduction

Lawyers are often asked to give opinions on how a specific law applies to a given situation or whether an intended action is in compliance with the law. In so many instances, the answer is not as straightforward as one would hope. This is particularly true when the law at issue is new legislation with no enforcement history and no judicial interpretation. However, even when a definitive answer cannot be provided, the exercise of thinking through a legal issue is valuable in gaining insight into what boundaries of law are clearly defined and what areas remain open to interpretation.

The case studies addressed in this work arise from questions raised by public librarians regarding applicability and compliance with several areas of Georgia law. Often the hoped-for YES or NO answer is not attainable. The process of applying Georgia law to library fact, however, does have value as an analytical exercise with the result being an informational tool that is a starting point for library administrators and governing boards in making decisions on legal issues.

Q: In light of Georgia’s more permissive gun carry law that now includes government buildings, what type of policy (if any) should public libraries enact regarding gun possession inside the library building?

Effective July 1, 2014, Georgia’s law regarding where permit holders may carry firearms was widened to include: “in a government building when the government building is open for business and where ingress into such building is not restricted or screened by security personnel.” O.C.G.A. § 16-11-127(e)(1). This is an affirmative right that the state has conveyed to licensed gun carriers. Since most public libraries in Georgia do not have manned security screening, a public library building falls squarely into the statute’s definition of government building. Therefore, any policy or practice that prohibits guns in the public library would be in direct contravention to this law.

In order determine the advisability of a policy forbidding guns in a Georgia public library, the library’s governing authority must evaluate the risks associated with such policy. The first consideration would be possible sanctions by the state for a violation of the quoted statute. The second consideration would be the possibility of challenges from the private sector.

As to any possible penalty imposed by the state, the statute providing the right of permit holders to bring a firearm into government buildings is entitled “Carrying a Weapon in Unauthorized Places” and is codified within the Crimes and Offenses title of the Georgia Code. The thrust of the statute is to prohibit weapons in certain places, and it provides a penalty for those who violate the prohibition. For example, a person who brings a gun to a jail or prison would be guilty of a misdemeanor. O.C.G.A. § 16-11-127(b)(3). The section which allows permit holders to carry weapons in government buildings is written as an exception to the broader prohibition carving out certain places where certain people may bring a weapon.

Because the law is directed at weapon carriers rather than the venues where weapons may be carried, there is nothing within the law itself establishing a penalty for preventing an eligible individual from exercising his or her right. Therefore, a public library policy forbidding guns in the library building will likely not result in a fine or other governmental sanction. Nevertheless, preventing a license holder from bringing his or her weapon into the public library would blatantly contravene the intent of state law and could result in unwanted attention from the Georgia Attorney General.

The larger risk for a public library that prevents permit holders from bringing guns onto the library premises is in the second consideration—a private challenge. The statutory expansion of where permit holders may bring weapons came about through lobbying efforts from a vocal gun rights group named GeorgiaCarry.org. This organization describes itself as “Georgia’s No Compromise Voice for Gun Owners” and has the stated goal of expanding the right to bear arms. In addition to the efforts in the legislative arena, GeorgiaCarry.org has an extensive litigation history in recent years. The organization has filed suit in state and federal courts challenging any limitation placed on gun carrying from requirements of a Social Security Number on permit applications to the statutory ban on firearms in places of worship. While GeorgiaCarry.org has not prevailed in every suit filed, it has won many. And often the result of winning means the losing party is required to pay the costs and attorney’s fees associated with bringing the suit.

A similar organization, Michigan Open Carry (“MOC”), undertook a challenge to public library policies forbidding guns inside a library building. Members of MOC staged open carry protests inside the Capital Area District Library in Lansing, Michigan by bringing their weapons into the library, a direct violation of the policy. In this instance, the library filed the lawsuit seeking to validate and enforce its weapons policy. Because Michigan state law explicitly

preempts local units of government from establishing laws or regulations pertaining to firearms, the court held that the library's policy was invalid. In other words, the library lost the suit, and there is now judicial precedent establishing the right to bring guns into public libraries in Michigan.

While Georgia's laws regarding weapons differ from Michigan's and the Michigan court's ruling has no effect in Georgia, the case is instructive for two reasons. First, it emboldens the organizations such as GeorgiaCarry.org to continue the push for expansion of gun carrying rights. Second, Georgia's law differs from Michigan's in that it gives permit holders an affirmative right to bring their weapons into government buildings. Michigan's law merely prohibited local governmental units from enacting regulations regarding weapons carry. Thus, a challenge under Georgia law would be even more likely to end in favor of the guns rights group.

The ultimate decision of whether to enact a policy regarding guns in the public library is in the hands of each public library's board. To make this decision, however, it is important that the board understand that the state of Georgia has afforded licensed gun owners the right to bring their guns into government buildings, which undoubtedly includes public library buildings. Additionally, the board must weigh the very real and potentially expensive risk of sustaining a challenge from GeorgiaCarry.org or one of its members.

Another question raised by Georgia's expansion of places where guns may be carried is whether the public library may prohibit an employee, who is a permit holder, from bringing his or her gun to work. The law specifies that employers that own a private premises may prohibit weapons—except in the parking lot. With the inclusion of government buildings as a place where permit holders may bring weapons, a permit holding employee who works in a government building has now been given an affirmative right to carry his or her weapon there.

Therefore, prohibiting an otherwise eligible employee from exercising that right could be challenged, with a likelihood of success. On the other hand, conditioning employment on an employee's willingness to abide by workplace rules is commonplace. For example, an employer may prohibit its employees, even those of legal drinking age, from drinking alcohol on the job. It therefore stands to reason that an employer could likewise prohibit guns on the job. The gun issue has more complicated factors, however. First, the state of Georgia has given license holders an affirmative right to bring weapons into government buildings. Additionally, the Second Amendment of the United States Constitution gives citizens the right to bear arms. Conditioning employment on foregoing these rights may not withstand a legal challenge.

In conclusion, any policy curtailing the right of licensed gun owners, be they patrons or employees, to bring guns into a public library in Georgia opens the library up the very real threat of legal challenge. In addition to the monetary costs and time loss a lawsuit would entail, the likelihood of a library prevailing is very slim. Library administrators and board members must weigh these factors against what would be gained by enacting or maintaining a policy prohibiting guns inside a library building. In ruling against the public library the Michigan court stated, "Our job is not to determine who has the better moral argument regarding when and where it is appropriate to carry guns. Instead, we are obligated to interpret and apply the law, regardless of whether we personally like the outcome." *Capital Area Dist. Library v. Michigan Open Carry, Inc.*, 298 Mich. App. 220, 223-24, 826 N.W.2d 736, 738 (2012) appeal denied, 495 Mich. 898, 839 N.W.2d 198 (2013).

Q: How does Georgia’s Health Care Freedom and ACA Non-Compliance Act apply to public libraries?

During the 2014 legislative session, the Georgia General Assembly passed a law prohibiting any state entity (including political subdivisions) from expending or using “moneys, human resources, or assets to advocate or intended to influence the citizens of this state in support of the voluntary expansion by the State of Georgia of eligibility for medical assistance in furtherance of the federal ‘Patient Protection and Affordable Care Act’, Public Law 111-148, beyond the eligibility criteria in effect on the effective date of this Code section.” Does this mean Georgia public libraries are prohibited from working with healthcare navigators or hosting educational events related to the Affordable Care Act? This question is further complicated by the statute’s exception for: providing bona fide educational instruction about the federal Patient Protection and Affordable Care Act of 2010 in institutions of higher learning or otherwise.” This statute went into effect July 1, 2014, and at this point, there is no judicial interpretation to guide entities affected. Therefore, public libraries are left with the challenge of statutory construction.

The purpose of statutory construction is to determine the applicability or implications of a given statute to a particular person or entity. It can be a complicated undertaking; however, the following basic guidelines simplify the task.

1. Read the statute: The language of the text of the statute is the starting point for any inquiry into its meaning. To properly understand and interpret a statute, you must read the text closely, keeping in mind that there could be multiple plausible interpretations of the language used.

2. Identify your goals: Having a specific question in mind assists the reader in understanding how statutory text applies to a given circumstance. An example here

would be: Is a public library director allowed to talk with health care navigators about community outreach?

3. Consider legislative intent: The role of the third branch of government, the judiciary, is to interpret the law. Georgia courts follow “[t]he cardinal rule” of statutory construction, which is to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate that intent and purpose.”

Carringer v. Rodgers, 276 Ga. 359, 363, 578 S.E.2d 841 (2003). *See also* O.C.G.A. § 1–3–1(a). In the absence of judicial interpretation, any statutory construction should include consideration of legislative intent.

With respect to Georgia’s Health Care Freedom and ACA Non-compliance Act, the plain language is vague. “[A]dvocate . . . in support of” and “in furtherance of the [ACA]” covers a lot of ground. The use of the word “otherwise” in the educational exception can be interpreted as a general catchall for any entity providing education, which public libraries certainly do.

Next, specifying precisely what the endeavor the library is considering—hosting a healthcare signup event, providing written materials supplied by navigators to patrons, providing information on a website, etc.—is necessary in making a decision about the applicability of the statute. Often reading the statute in the context of extreme circumstances makes the contours of the law clear. For example, if the public library was considering utilizing its staff to research, assist, and sign up individuals at Healthcare.gov, it is easy to conclude there is a violation of the law. On the other hand, a library staff member providing technical assistance in utilizing the library computer when a patron is accessing Healthcare.gov would likely not run afoul of the law. These black and white examples are useful to consider, but the more likely scenarios for public libraries will fall in a gray area.

There is little question as to the legislative intent here. Georgia House Representative Jason Spencer, sponsor of the non-compliance statute, explained that the goal of the legislation is to “say no” to the Affordable Care Act by disallowing the federal government from using the state’s resources to implement the federal law. Thus, under the legislative intent analysis, public library participation in any efforts to promote or effectuate the ACA would be violating the Georgia statute.

Of course, the plain language and underlying intent of the Georgia statute is not the final word on what role Georgia public libraries may play in the context of the ACA. The ACA is law as well. How far a state may legitimately go in resisting a federal statute must be considered. Federal law is capable of preempting state law because the Supremacy Clause of the United States Constitution declares that federal law is the supreme law of the land. Congress can expressly preempt state law by including appropriate language in a statute; preemption also occurs by implication.

After the passage of the ACA, at least forty state legislatures proposed legislation to limit, alter, or oppose aspects of health care reform legislation. Since that time, the United States Supreme Court has upheld most portions of the ACA. However, opposition bills such as Georgia’s continue as instruments of political dissent, but the legal force of these laws remains in question.

For example, a federal court in Missouri invalidated that state’s legislative attempt to obstruct the ACA. *St. Louis Effort for Aids v. Huff*, 13-4246-CV-C-ODS, 2014 WL 273201 (W.D. Mo. Jan. 23, 2014). The Missouri judge concluded that the state statute’s edict made complying with both the federal and state law impossible and the Supremacy Clause meant the federal law controls. This holding applies only in Missouri. Furthermore, the Missouri law was

aimed at activities by federal navigators, not at state entities as with the Georgia statute. Therefore, the specific holding of the Missouri court does not provide guidance as to the validity of the Georgia statute. Nevertheless, the existence of the challenge indicates the type of developments that are necessary to make a more certain interpretation of how the Georgia law applies to public libraries.

**Q: Is it advisable to extend borrowing privileges to institutional patrons?
What are the contract and collection implications?**

Public libraries may be requested to issue library cards in the name of organizations as opposed to individuals. This might include schools, daycare centers, jails, and nursing homes who wish to provide their employees and participants with the ability to borrow library materials. The concern for a public library is being assured that the organization properly enters a contract as to liability for library property and for payment of fees and fines.

For private entities such as a nursing home or a daycare center, contract and collection issues are dependent on whether the library is working with a representative of the organization who is authorized to bind it. The general concepts of agency law apply: an agent who acts within the scope of authority conferred by his or her principal binds the principal in the obligations he or she creates against third parties. Some level of inquiry should be made by the library to be certain that the signatory is in fact authorized.

Public schools and jails are governmental entities and how they are authorized to enter into contracts is set out in statutory law. Furthermore, the public library is also a governmental entity. The Georgia Constitution contains a clause regarding intergovernmental relations:

The state, or any institution, department, or other agency thereof, and any county, municipality, school district, or other political subdivision of the state may contract for any period not exceeding 50 years with each other or with any other public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide.

Ga. Const. art. IX, § 3, ¶ I(a). As with private entities, it is necessary for the library to be assured that the person purporting to bind the governmental entity has the authority to do so.

Sample Institutional Patron Application

Institutions in XXXXX County and agencies of XXXXX County government are eligible to apply for an institutional card. An institution is defined as: day care, kindergarten, preschool, school, prison, retirement home, nursing home, or hospital.

The purpose of the card is to provide materials needed by institutions/agencies to fulfill their missions. (The card is not intended for individual employee use; individuals must apply for their own library card.) If the purpose of the institutional card is abused, the library will terminate the institution's/agency's borrowing privileges.

The institutional card must be presented at the time of checkout.

The same regulations applying to individual adult resident borrowers apply to institutions/agencies. However, institutional cards must be renewed annually.

Applications for institutional cards must be approved by the Library Director.

Name of institution/agency: _____

(Use official name, including name of parent institution, if applicable.)

Street Address: _____

City: _____ **State:** _____ **Zip:** _____

County: _____

Phone: _____ **E-mail:** _____

Name of Person Making Application: _____

Title: _____

Signature: _____

The fiscal agent, owner, treasurer, or other individual duly authorized to accept financial responsibility for materials borrowed on this card must complete the information below. Financial responsibility includes full payment for any lost materials or equipment, the cost of repairs/replacement of damaged equipment or materials (cost determined by the library) and any fines and fees charged for overdue items. The institution is fully responsible for controlling the use of the institutional card. The institution must notify the library if the fiscal agent changes.

Name of fiscal agent: _____

**Q: Are e-cigarettes prohibited in public buildings under state law?
If not, may the public library prohibit the use of e-cigarettes inside?**

For nearly a decade, public buildings in Georgia have been designated no-smoking zones pursuant to the Georgia Smoke Free Air Act of 2005. The stated purpose of this legislation “is to preserve and improve the health, comfort and environment of the people of this State, including children, adults, and employees, by limiting exposure to tobacco smoke.” Ga Comp. R. & Regs. 290-5-61-.02. In recent years a new product has emerged, the electronic cigarette (“e-cigarette”). An e-cigarette is any electronic Nicotine Delivery Product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. According to the e-cigarette industry, these devices do not emit second hand smoke. Trejos, N. “Do Smoking Bans Apply to E-cigarettes” *USA Today*, July 2, 2013. The Center for Tobacco Control Research and Education contends, however, that the devices do emit toxic chemicals into the environment. The question of whether a public library may (or even must) ban the use of e-cigarettes inside its doors involves a look at the current national state and local laws as well as considerations of the rights of e-smokers.

In 2010, the Federal Drug Administration was curtailed in its attempts to regulate e-cigarettes as drugs. A federal court held that electronic cigarettes qualify as tobacco products, not drugs. *Smoking Everywhere, Inc. v. U.S. Food & Drug Admin.*, 680 F. Supp. 2d 62, 67 (D.D.C. 2010). This ruling was affirmed on appeal. *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891 (D.C. Cir. 2010). In April 2014, the FDA proposed new regulations for tobacco products, including electronic cigarettes. The regulations require disclosure of ingredients to buyers but do not touch on public use.

The Georgia Smoke Free Air Act is the next level of legal framework to consider. The Act prohibits smoking in all enclosed facilities, including buildings owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any political subdivision of the state. O.C.G.A. § 31-12A-3. The question is whether the use of e-cigarettes is “smoking.” The Act defines “smoking” as “inhaling, exhaling, burning, or carrying any lighted tobacco product including cigarettes, cigars, and pipe tobacco.” O.C.G.A. § 31-12A-2(16). As set forth above, a federal court has determined that e-cigarettes are “tobacco products.” However, it is unclear whether an e-cigarette is “lighted” as defined by the Act. Therefore, the applicability of the Act to e-cigarettes remains an open question.

Importantly, Georgia’s no-smoking law does not contain a provision that prohibits local governmental entities from enacting their own ordinances. At least three municipalities have enacted ordinances prohibiting e-cigarettes in county-owned buildings: Forsyth County, Chatham County, and DeKalb County. Likewise, a public library board in Georgia recently created a policy banning e-cigarette use inside library buildings. Reed, M.. “Library System Snuffs Out E-Cigarettes.” *Forsyth County News*, July 25, 2014 available at <http://www.forsythnews.com/section/5/article/24940/>.

Bans on e-cigarettes are relatively new, and there is little jurisprudence on this issue. However, a lawsuit was filed earlier this year by a smokers’ rights group challenging New York City’s ban on the use of e-cigarettes in public places. *NYC C.L.A.S.H. Inc. v. City of New York*, (Supreme Court of New York, March 25, 2014). The outcome of this suit will have no precedential value in Georgia, but it will provide a glimpse into what advocates of smokers’ rights may argue. Moreover, if successful, other venues banning e-cigarettes can expect to be challenged by smokers’ rights groups.

In conclusion, there is nothing preventing a public library in Georgia from banning e-cigarettes. Under a broad interpretation of the Smoke-Free Air Act of 2005, e-cigarettes are already banned in public libraries. Because that statute does not explicitly apply to e-cigarettes, a library board that wishes to prohibit the use of the devices would be wise to promulgate its own policy. In doing so, the board should be mindful of the four hallmarks of policy-making: (1) reflective of library mission, (2) legitimate purpose, (3) specificity, and (4) uniform application.

Sample Policy: E-Cigarettes

All library buildings and library vehicles are designated as smoke-free and tobacco-free areas. In addition, the use or inhalation of e-cigarettes or electronic cigarettes (“vaping”) is prohibited in library buildings and library vehicles. Smoking, tobacco use, and vaping are prohibited within 50 feet of any library entrance or exit, on loading docks, in courtyards, and on library grounds. This policy applies to the use of any tobacco or vaping product, including smokeless tobacco. It applies to both employees of and visitors to the library.

Q: What are a public library's duties to maintaining electronic records for purposes of open records requests?

Georgia's Open Records Act applies to electronic data including emails and text messages. O.C.G.A. §§ 50-18-71(g) and (h). While the statute does not specify, the Georgia Attorney General's office takes the position that all email and text messages concerning the agency's business are open regardless of whether they were generated from a personal account. Likewise, according to the Attorney General's office, all email and text messages created or kept on the governmental equipment or devices are subject to disclosure regardless of subject matter. Therefore, a public library must be prepared to provide electronic records that meet the criteria articulated in an open records request. This could be a daunting task for any organization whose employees communicate electronically on a frequent basis.

With the exception of certain industries (i.e., companies regulated by the Securities and Exchange Commission) there is no universal law of document retention. There is a common law duty to preserve documents that an organization reasonably believes may be discoverable in anticipated litigation. But, generally, organizations are free to develop their own retention policies.

The basic functions of a document retention policy are (1) the identification of documents utilized and created within an organization, (2) enumeration of categories within which the documents will fall, and (3) assignment of a time period for retaining documents within each category. Examples of categories contained in a document retention policy may include personnel files, budget records, facility maintenance receipts, etc. Retention periods are usually determined by the content, nature, and purpose of records, and are set based on their legal, fiscal, administrative, and historical values, regardless of the format in which they reside. Therefore,

there is no single retention period that applies to all of an organization's e-mails. E-mail, as with records in other formats, can have a variety of purposes and relate to a variety of functions and activities. The retention of any particular e-mail message will generally be the same as the retention for records in any other format that document the same function or activity. For instance, e-mails might fall under a general correspondence category or a budget records category. Therefore, the length of time a particular email must be maintained will depend upon the category it falls into. However, e-mails often reside in cluttered inboxes with no tagging to identify what document category is implicated. As a result, identifying and gathering emails across an entire organization that are responsive to an open records request could present an overwhelming task.

Public libraries, because they are subject to open records laws, must consider document retention in the electronic context. Doing so will require application of the organization's retention policy across all formats including employees' e-mail and text message repositories. A valuable first step in this process may be issuing guidelines for use of electronic means of communication in the workplace. A sample policy for employee e-mail practices is below.

Sample Policy: Employee E-mail Practices

Documents in electronic mail format are records as defined by Georgia's Open Records Act when their content relates to the business of the Library or are created and reside on Library equipment. Therefore, employees should think before writing and again before

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pushing “send.” While e-mail provides a quick way to share information over long distances, it also carries the responsibility of using and managing it wisely. An employee should not put anything in an e-mail that he or she would not want to see on the front page of the local paper.

The second step in managing electronic records subject to open records requests is to continually weed out e-mails that do not fall into a category for maintaining under a document retention schedule. E-mails that are outside the scope of documents identified for retention are considered “transitory messages.” These include e-mails that are created primarily to communicate information of short-term value. Transitory messages are not intended to formalize or perpetuate knowledge, do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt. Because transitory messages do not fall under any retention schedule, an e-mail that is transitory can be deleted after read. Employees should be encouraged to frequently cull transitory messages from inboxes to avoid unnecessary clutter.

The final step to managing electronic records for purposes of open records requests is to electronically sort e-mails that are within the categories of the organization’s document retention schedule. E-mail programs allow sorting and archiving through the use of folders. More sophisticated programs offer tagging and automatic deletion upon the expiration of the assigned retention period. Employees should be encouraged to utilize these sorting functions in order to properly maintain electronic records that could be sought via an open records request.

As a governmental entity, public libraries are subject to Georgia's Open Records Act. Technology now allows a great deal of library business to be conducted electronically. A public library has the responsibility, however, to maintain its electronic records in the same fashion that traditional business records are kept. Therefore, employee e-mail practices must be addressed by library administrators to ensure that proper document retention is occurring in the e-mail context. Up front organization and planning in this area will save countless hours of combing employee electronic inboxes to locate and identify documents responsive to an open records request.

Q: May a public library enter into a joint venture with another non-profit entity involving value-added services for which a fee will be charged?

Libraries are facing tightening budgets and have a need to generate revenue beyond fines and regular fees. Generally, the library is a source of “free” service; however, library users do pay for those services through their tax dollars. There have been suggestions in library literature about creating a line of premium services for which to charge. Under Georgia’s statutes establishing public libraries, there is no prohibition of fee-for-service offerings by a public library. However, the American Library Association says, “Charging fees for the use of library collections, services, programs and facilities that were purchased using public funds raises barriers to access. Such fees effectively reinforce distinctions among users based on the ability to pay.”

A public library board that is considering offering fee-for-service options must weigh the traditional library philosophy embodied in the ALA’s statement against the need to be a good steward of its resources. For example, a Georgia public library has been approached by a non-profit foundation proposing an addition of a small museum to the library. The foundation will pay the construction costs and contribute a flat fee annually to the library. The fee payment will be used by the library to pay utilities and for a part-time historian who would offer programs related to the museum exhibits. The foundation has proposed that the library charge a fee to patrons to access the museum; the fees collected will be kept by the library.

This scenario goes beyond basic library services. Additionally, it is based upon a facility and programs that were paid for not by public funds, but with money contributed by the foundation. Thus, it seems outside of the philosophical concerns raised by the ALA statement.

In the event that the public library in the above example chooses to move forward with the joint venture proposed, there are additional aspects to consider. First, the board may wish to create a policy statement to reflect the basis of its decision to include a fee-for-service option within the public library. Below are two sample policy statements contemplating the collection of fees for certain library services

Sample Policy 1: Fee-for-service

Cost recovery fees may be imposed for services beyond circulation of materials, reference services (locating and assisting in use of information) and admissions to the facility or any programs sponsored or conducted by the Library. Fees will be assigned based on a full or partial cost recovery formula that will include such factors as staff time, consumables, and utility costs.

Sample Policy 2: Fee-for-service

The Board of Directors may permit the library to charge admission for programs held to benefit the library. If there is a charge to enter a

program during hours that the library is open, this activity may not restrict access to regular library services.

The second consideration for a public library board contemplating is Georgia's statute pertaining to a library's authorization to enter into contracts. O.C.G.A. § 20-5-49. In the above example of the joint venture, the agreement between the library and the non-profit foundation must conform to this statute, which provides:

Library systems are authorized to make and enter into such contracts or agreements as are deemed necessary and desirable. All such contracts or agreements entered into shall:

- (1) Detail the specific nature of the services, programs, facilities, arrangements, or properties to which such contracts or agreements are applicable;
- (2) Provide for the allocation of costs and other financial responsibilities;
- (3) Specify the respective rights, duties, obligations, and liabilities of the parties; and
- (4) Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriated to the proper effectuation and performance of the agreement.

No public or private library agency shall enter into any agreement itself, or jointly with any other library agency, to exercise any power or engage in any action prohibited by the Constitution or laws of this state.

Finally, a library board considering fee-for-service must assess the tax consequences of the income generation. As governmental entities, public libraries enjoy tax exempt status.

However, creating an income from stream services that are outside the scope of basic library

functions could require specialized reporting and perhaps the payment of taxes on the revenue.

Library accounting or business advisors should be consulted.

Q: Mandatory Child Abuse Reporting: What training is required for young volunteers or short-term volunteers?

Effective July 1, 2012, Georgia's law on mandated reporting of suspected child abuse expanded the definition of "child service organization personnel" to include "persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children." O.C.G.A. § 19-7-5. Because Georgia's public libraries provide both educational and recreational programs to children, anyone who is employed by, or volunteers at, a public library that serves children is now a mandatory reporter. The statute contains no age limitation for reporters; therefore, all library employees and volunteers, even minors, are subject to the mandatory reporting law.

The purpose of the mandated reporter law is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible.

Library employees and volunteers should be notified of their responsibilities under the law and given information on what signs to look for in order to spot abuse. In situations where the public library has volunteers who are children themselves, or short-term volunteers, the requirement to train seems inappropriate or overly formulaic. However, the law makes no exceptions for age or duration of volunteers. Therefore, all library volunteers are subject to the requirements of the mandated reporter law.

Georgia's Department of Human Services provides detailed information on how to spot and report abuse as well a one-page summary that will be helpful library employees. To learn more, go to <http://dfcs.dhr.georgia.gov> and access the "Services" drop-down menu to select "Child Abuse & Neglect." Another resource for educating personnel on how to spot abuse is a free on-line training course available from the Governor's Office for Children and Family (<http://children.georgia.gov/press-releases/2012-07-27/governor-signs-amendment-expanding-mandated-reporter-laws>).

It is crucial that library personnel understand how to make a report of abuse in addition to knowing how to identify abuse. As applied to public libraries, the statute contains an ambiguity in the reporting procedure. The general reporting procedure requires the person who has a reasonable belief that abuse is or was occurring to make an immediate oral report to the appropriate child welfare agency or, in the absence of such agency, the appropriate police authority or district attorney. In most locations the child welfare agency that provides protective services is the county Division of Family and Children's Services (DFACS). To find the DFACS nearest your library go to <http://dfcs.dhs.georgia.gov/county-offices>.

Subsection 2(c) slightly alters the procedure as to employees or volunteers at "a hospital, school, social agency, or similar facility" to allow compliance through notification of the person in charge of the facility. It then becomes the responsibility of the person in charge of the facility to make the immediate oral report to the proper authority.

The applicability of subsection 2(c) to public libraries is unclear. Given the state's policy for the establishment of public library service as "part of the provisions for public education" (O.C.G.A. § 20-5-1), it is reasonable to conclude (but not certain) that a public library is a "similar facility" to a school. However, this is a decision that each library system, through its

board and library director, must reach individually. Making this decision is necessary in order to adopt and implement a policy on mandatory reporting and educating personnel on what is required.

Even if a library determines it may utilize the subsection 2(c) notification process rather than require every individual employee or volunteer to report directly to the child welfare agency, there is at least a small number of employees that require training in how to make the proper report. In addition to educating personnel on how to identify abuse suggested above, for those required to report directly to DFACS or law enforcement, training should include:

- the name and contact number for the appropriate agency,
- the nature of the information to be provided verbally,
- the contents of the follow-up written report.

Essentially, the reporter should provide a description of what was observed or the circumstances that led to the suspicion of abuse. The reporter has no obligation to investigate, and, in fact, investigation should be left to child protection professionals. Library personnel will have complied with the statute if all known information is reported. Library employees may be cautious about revealing information about library patrons because of Georgia's confidentiality statute regarding library records, O.C.G.A. § 24-9-46. It should be noted, however, that the law regarding confidentiality applies to circulation records. Therefore, providing the identity of a suspected abuse victim and that of the parent or caretaker to child protection services does not violate the confidentiality statute.

Finally, personnel should be informed that the mandatory reporting statute does not guarantee anonymity; however, written reports that are provided to law enforcement agencies are not subject to the Open Records Act. Moreover, your local DFACS office may allow

confidential reporting. The statute does provide immunity from civil and criminal liability for a mandatory reporter who makes a report in good faith.

Q: What is the applicability of Georgia’s Open Meetings Law to Friends Groups? What concerns would a Friends Group have in hosting meeting of local legislative authorities?

Georgia’s open meetings law applies to meetings of the governing authority of every “agency” including every county, municipal corporation, school district, or other political subdivision of the state and any committee of an agency. O.C.G.A. § 50-14-1(a)(1). A Friends group is a non-profit entity established to advocate on behalf of the library and raise money for the library. It consists of community members and is not a part of library governance. The group has no policy-making role. Therefore, a Friends meeting is not covered by the Open Meetings Laws.

Of course, the library board is the governing authority of the public library, and, therefore, its meetings are without doubt subject to the Open Meetings Law. Therefore, attendance of a Friends meeting by board members could transform it into a meeting of the board. The law defines “meeting” as the gathering of a quorum of the members of the governing body or any of its committees where official business is considered. O.C.G.A. § 50-14-1(a)(3)(A).

If a Friends group organized a meeting of local legislators, including the entire county commission, to build good will and inform legislators of library needs, there would a quorum of members of the commission present. Arguably, the quorum of members in this example---the commissioners---are not considering official business of the commission and thus the meeting would not become an official commission meeting. However, under a strict interpretation of the language of the statute, a challenge could be raised.

Efforts by the Friends group to comply with the commission's duties under the open meetings laws such as advertising and publishing an agenda would be problematic. This is because in reality the gathering at issue is not a commission meeting. It is a meeting between the Friends Group (not subject to the open meetings laws) and elected officials (who are subject to open meetings law). Moreover, even if a challenge is raised, it is the entity that is subject to the Open Meetings Act that would be challenged here, not the Friends group.

Q: Are library workers required to request parental permission prior to taking photos that include children participating in library events?

There is no prohibition against taking a photograph of a child in a public place—unless the photographer is a registered sex offender. *See* O.C.G.A. § 42-1-18(b). Given that the question has arisen about children participating in library events, the setting is almost certainly a public place. Note that there are privacy rights that protect individuals from intrusion into their private affairs. Thus, an individual, regardless of age, would have a claim against a photographer who takes a picture of the subject in a place where a reasonable person would have a legitimate expectation of privacy. For example, a public restroom is, as its name suggests, a “public place,” however, this is an area where a reasonable person would expect privacy. *Johnson v. Allen*, 272 Ga. App. 861, 864, 613 S.E.2d 657, 660 (2005). Therefore, photography in the library should be limited to open areas where there would be no expectation of privacy.

A more complex issue is how a photograph, legally taken, will be utilized. Before publishing a photograph of any person, regardless of age, in a newsletter or on-line, library administrators must consider the “privacy torts.” Under Georgia law, there are four species of the tort of invasion of privacy: “(1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; (2) public disclosure of embarrassing private facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public eye; and (4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness.” *Torrance v. Morris Pub. Grp. LLC*, 281 Ga. App. 563, 572, 636 S.E.2d 740, 747 (2006).

The first of the four types of invasion of privacy is the tort discussed above regarding the taking of the photo—an unreasonable and highly offensive intrusion upon another's seclusion.

As a practical matter, photos taken in the public area of the library will never trigger privacy concerns of this nature.

The second type of invasion of privacy recognized in Georgia is a public disclosure of embarrassing facts about an individual, which has the following elements: (1) public disclosure of private facts; (2) the facts disclosed to the public must be private, secluded or secret facts and not public ones; and (3) the matter made public must be offensive and objectionable to a reasonable man of ordinary sensibilities under the circumstances. *Eason v. Marine Terminals Corp.*, 309 Ga. App. 669, 710 S.E.2d 867 (2011). The risk of liability for this tort in the context of the publication of a photograph taken in public is very low. A famous example of this type of claim is a 1976 case in which a federal court in Pennsylvania held that a picture taken of a fan with his pants unzipped at a Pittsburgh Steelers football game, while embarrassing, was not the disclosure of private information. The key to this finding was that the photograph was taken in a public setting. *Neff v. Time, Inc.*, 406 F. Supp. 858, 862 (W.D. Pa. 1976)

The third species of invasion of privacy in Georgia is placing an individual in a false light in the public eye. The “false light” element of this tort requires depiction of an individual as something or someone that he is not and the false light in which he was placed would be highly offensive to a reasonable person. *Williams v. Cobb County Farm Bureau, Inc.*, 312 Ga. App. 350, 718 S.E.2d 540 (2011), *Blakey v. Victory Equipment Sales, Inc.*, 259 Ga. App. 34, 576 S.E.2d 288 (2002); *Nelson v. Glynn-Brunswick Hosp. Authority*, 257 Ga. App. 571, 571 S.E.2d 557 (2002); *Association Services, Inc. v. Smith*, 249 Ga. App. 629, 549 S.E.2d 454 (2001). As with the other types of invasion of privacy set forth above, the photograph of a person, regardless of age, at a public library event is not at all likely to arise to a false light claim.

The final type of invasion of privacy, appropriation of the likeness of another for advantage, is more pertinent to the discussion of whether to obtain consent from the subjects of photographs taken by public library workers. Unlike a claim based on intrusion, disclosure, or false light, an appropriation claim does not require the invasion of something secret, secluded, or private, nor does it involve falsity. Instead, the tort consists of the appropriation, for the defendant's benefits, use, or advantage, of another's likeness. *Bullard v. MRA Holding, LLC*, 292 Ga. 748, 740 S.E.2d 622 (2013). In most instances, lawsuits stemming from the tort of appropriation involves commercial exploitation. *Pierson v. News Group Publications, Inc.*, 549 F. Supp. 635 (S.D. Ga. 1982). For example, a photograph of a celebrity using a commercial product that is published by the manufacturer of the product to promote the item could form the basis for a successful appropriation claim. There is little likelihood that a photograph used by a governmental entity to promote an event would be considered commercial exploitation; however the risk of exposure under the appropriation tort is not zero.

Despite the absence of explicit legal requirements to obtain consent to photograph the library cannot go wrong by asking for permission, particularly when children are involved. A public library is an integral part of the community and in the interest of promoting community relations, announcing that photographs and video will be taken at events and that the images may be published by the library can only serve to facilitate communication and avoid disharmony between the library and its patrons. A library wishing to assure itself that use of photographs of children will not cause concern to parents; the sample consent form below can be used.

SAMPLE PARENTAL CONSENT FORM

I give permission for my child's photograph, taken in conjunction with his/her use of the public library or attendance at a public library event or activity, to be put on the [name of public library]'s World Wide Web (WWW) site or published in the [name of public library]'s newsletter or other library-affiliated publication.

[Name of minor child]

[Name of parent]

Date: _____

**Q: Sharing patron info between libraries: What type of patron information may a public library provide to other libraries?
Is it permissible to give name, address & phone numbers?**

Georgia has a statute that designates public library circulation records as confidential. O.C.G.A. § 24-12-30 requires non-disclosure of “circulation and similar records which identify the user of library materials.” A look back at the history of Georgia’s and most other states’ confidentiality statutes reveals that these laws were enacted in the early 1980s in reaction to law enforcement investigations of what members of the public were reading. While not stated so precisely in the statute itself, the underlying intent of these laws was to prevent revealing information that would allow matching up patron name with patron circulation history. Thus, unless actual circulation, research history, etc. is at issue, the confidentiality statute is not implicated.

Even if the confidentiality statute applies, the first exception contained in the law exempts records disclosed “to members of the library staff in the ordinary course of business.” Clearly this allows for library employees to access and share information with each other to accomplish the customary business of the organization. What about sharing information between library systems? Under a strict reading of this exception, sharing may occur only within the library originating a patron record. However, there are instances where a library entity encompasses multiple counties; for example, Georgia’s Subregional Talking Book Centers. A reasonable interpretation of the exception would be to include library staff from the counties encompassed by the local Talking Book Center as staff members of the entity that originated the record. This is particularly true if there is overlap between librarians or board members.

Finally, assessing the question from a practical standpoint is important. If the intent of sharing patron information is to promote library use and not to provide investigators with information a reasonable person would believe to be private, there is little likelihood of a challenge.

At the end of the day, there is a judgment call involved. Like so many areas of the law, there is no clear cut yes or no answer. But knowing and understanding the intent of the confidentiality statute and remaining consistent with that intent is most important. Then weighing the true risk of violating the confidentiality statute against the benefit sought to be achieved through the sharing of information will direct the decision making.