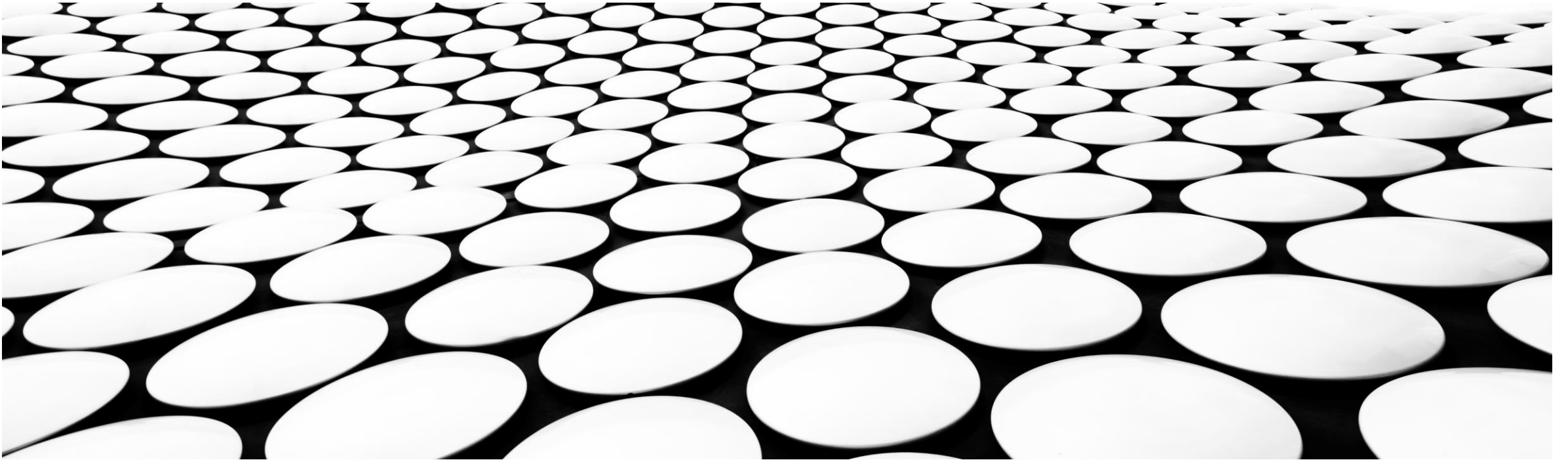

LIBRARIES AND THE LAW IN WISCONSIN

KRIS TURNER



WHO I AM AND WHAT WE'RE DISCUSSING TODAY

Associate Director of Public Services at the University of Wisconsin Law School Library

MLS ('12) and JD ('20)...so I have a law degree but I'm not your lawyer!

- Locating and reading the law
- Library Board and trustee law: Chapter 43
 - A few specific sections to know about and how to read it
 - Powers of the Board
 - Open Meetings
 - Polling Places
- Book challenges and responses
 - Local resources and WLA handout
- Other topics:
 - Director Review and Board Role
 - Privacy v. Law Enforcement
 - Shared Services and Legal Counsel
- Who to ask for assistance, resources to review, and Q&A





UNDERSTANDING THE LAW – WHAT GOVERNS US

- Federal Law (Law of the Land)
- State Statutory Laws (WI Legislative Branch)
 - Statutes (from Acts, which are from Bills)
 - Attorney General opinions – clarifications and advisement
- Local Law (Ordinances)
 - Counties, towns, villages, cities all can create their own ordinances
- Case Law (Judicial Branch)
 - Interpreting and challenging the law
- Administrative Law (Executive Branch)
 - Enforcing and adjudicating the laws

LOCATING THE LAW

Wisconsin law is readily available!

[Statutes are available on the WI Legislature page](#)

Local ordinances are also largely available online:

<https://wilawlibrary.gov/topics/ordinances.php>

Case law for many US jurisdictions are freely available on Google

Scholar: <https://scholar.google.com/>

Administrative Codes are also on the WI Legislature page: https://docs.legis.wisconsin.gov/code/admin_code

Federal law is even more available!

(Ex: <https://www.govinfo.gov/app/collection/uscode/2021/>)



READING THE LAW: UNDERSTANDING THE STATUTE IN FIVE EASY(?) STEPS

- 1. Read the statute – watch for 'primary' language and note how it may affect your library.
- 2. Understand the terms being used.
 - Check for Definitions at the start of a section – there may be particular meanings for particular chapters.
 - If not sure, start with the plain meaning of the term, and then dictionary terms.
- 3. Check to see if your statute has already been analyzed or interpreted by a court or an administrative agency.
- 4. Watch for references to other statutes or 'buddy' statutes (and read it in context!)
 - WI will link to related statutes that are relevant.
- 5. Finally, see if you can determine the legislative purpose if needed.
 - Watch for 'purpose' clauses or check for a legislative history (which details how the statute became law).

Terms	Function
And v. Or	“And” typically signifies a conjunctive list, meaning each condition in the list must be satisfied, while “or” typically signifies a disjunctive list, meaning satisfying any one condition in the list is sufficient
May v. Shall	Generally, “shall” signifies that certain behavior is mandated by the statute, while “may” grants the agent some discretion
Unless Except	These terms usually signify an exception to the statute
Subject to... Within the meaning of For the purposes of	These terms may limit the scope of the statute, or may indicate that a certain part of the statute is controlled or limited by another section or statute
If...then... Upon Before/After Provided that...	Generally, these terms indicate that for one part of a statute to take effect, a precondition or requirement must be satisfied
Notwithstanding	Literally, “in spite of,” this term usually signifies that a certain term or provision is not controlled or limited by other parts of the statute, or by other statutes
Each/Only Every/Any/All	These terms commonly limit the class of objects that are either included in or excluded from the statute



**LIBRARY-SPECIFIC
LAW TO KNOW
ABOUT: CHAPTER 43**

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POWERS OF THE BOARD

■ [Chapter 43](#) is where many library-related laws are found.

■ Primary statute sections to start with:

- [Municipal Libraries](#)
- [Municipal Library Board Composition](#)
- [Powers and Duties](#)

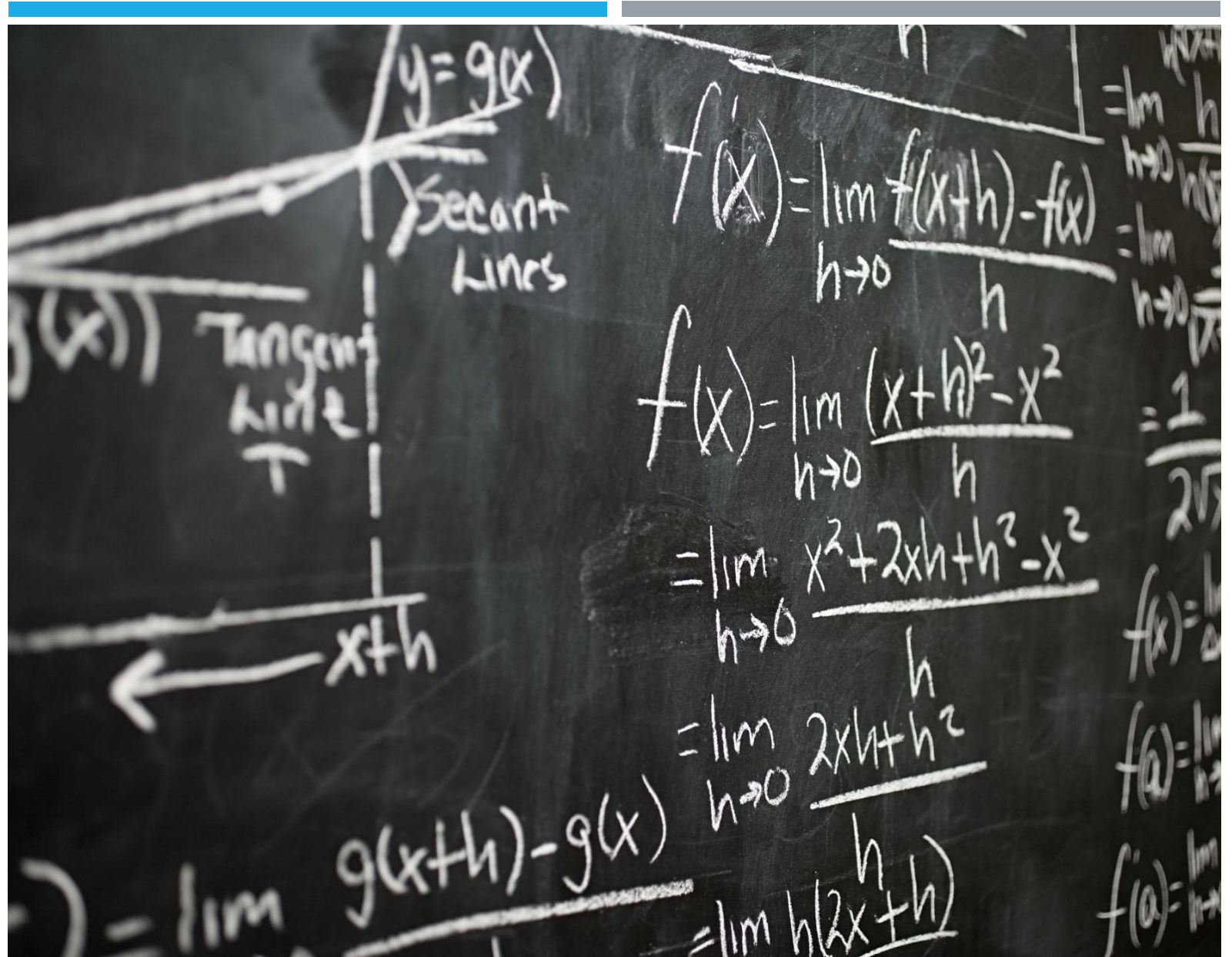
■ Some highlights:

■ Exclusive control of all library expenditures. 43.58(2)(a)

■ Exclusive control of all lands, buildings, money, and property acquired or leased by the municipality for library purposes. 43.58(1)

■ Supervising the administration of the library and appointing a librarian. 43.58(4)

■ Prescribing the duties and compensation of all library employees. 43.58(4)



Procedures for Holding a Closed Session

The following steps are **all** required for a library board (or any other government body) to conduct a closed session legally:

1. The meeting notice **must** indicate any contemplated closed session, the subject matter of the closed session discussion, and the specific statutory provision allowing a closed session. If a closed session was not planned, a board may still go into closed session on any subject contained in the meeting notice, whether the notice provides for a closed session or not, if the board follows the procedures below.
2. The board must first convene in open session.
3. The chief presiding officer must announce to all present at the meeting the intention of going into closed session and the purpose of the closed session.
4. The chief presiding officer must state the specific section of the law, by statute number (e.g., Section 19.85(1)(c) for a director evaluation session), which allows for the closed meeting. This announcement should be recorded in the minutes. It is good practice for library staff to prepare in advance the exact wording of the announcement to be used.
5. Going into closed session requires a motion, second, and **roll call vote** to reconvene in closed session. The vote of each board member on this motion must be recorded in the minutes and preserved. A majority vote is required to reconvene in closed session.
6. Attendance at the closed session is limited to the board, necessary staff, and any other persons whose presence is needed for the business at hand.
7. Closed session discussions must be limited to the subject announced in the meeting notice and the chief presiding officer's announcement.
8. Certain votes **may possibly** be legally taken in closed session. But it is a better practice and safer legally to take votes after reconvening into open session. At any rate, all board actions, whether taken in open or closed session, must be recorded in the minutes and be open to public inspection. Secret ballots are allowed only for the election of board officers.
9. The board may legally reconvene in open session as long as that intent was noted in the public notice of the meeting. If there was no advance public notice given that the board intended to reconvene in open session, the board is required to wait at least 12 hours after the completion of the closed session before reconvening in open session.

OPEN MEETING LAWS

- Open Meetings Laws apply to other governmental bodies beyond libraries, so the controlling statute is found in the Public Officials chapter, [specifically 19.81-19.98.](#)
- Some highlights and notes:
 - The meeting requires 24 hour notice (unless it's an emergency) and the meeting to be held in a reasonably accessible place. 19.81(2) and 19.84(3)
 - You can hold closed sessions, but only when certain conditions are met. 19.85
 - Purposes for closed sessions are listed in 19.85(1)
 - Careful with emails about Board business – you may be creating an impromptu meeting that violates the open meeting law
 - [Attorney General opinion from 2010](#)
 - Penalties for violating can run from \$25-300 without reimbursement 19.96

Voting and poll places:

[Wisconsin Statutes 5.25\(1\) and \(2\)](#) shed some light on polling places in WI in general...

(1) says it should be a public building, but it doesn't have to be if it's not practicable

(2) notes that the "governing body" of the town/village/etc. will establish the places.

Additional insight about accessibility and discontinuing sites as well.

The Library Board could provide information to the municipality, but the Library Board may not have the final say about polling places.



BOOK CHALLENGE LOGISTICS

Collection
Development question

Local – no statute
governing this beyond
general freedom of
information guidance.

Many libraries have
similar procedures for
when a book is
challenged.

Everything You Want to Know About Book Challenges...and a Bit You Probably Don't

Monday, August 19, 2024 - 12:00

Presenter: [Tasslyn Magnusson](#)

Join your fellow Wisconsin library trustees and catch up on the news in book reconsideration policies, challenges, and weathering this unprecedented time for libraries across the country. Webinar participants will review some of the latest information and trends on book challenges and attacks on libraries and librarians and, most importantly strategies for preparing for and managing if (when) these challenges come to your library.





THE LIFE CYCLE of a Library Book

Library Staff

Board-Approved Collection Development Policy

Staff Selects

Professional Journals (e.g. Publishers Weekly, Library Journal, BookList), Magazines, Newspapers, Staff Expertise

Purchased

Baker & Taylor, Ingram, Local Bookstores, Amazon, Direct from Publisher

Processed

Stamped, Labeled, and Covered

Cataloged

Added to online catalog

Shelved

Children's, Young Adult, or Adult

Copies Added

Community demand triggers the purchase of more copies

Systems' ILS Deliveries

Checked In

Reshelfed

Weeded

Deselected or damaged material given to Friends for booksale or recycling

Staff Selects New Books

Library Patron

Community Member/Taxpayer

90% of library budgets come from municipal governments (city, village, town, county, tribal, etc.)

Patron Request

Word of mouth, media mentions, newspapers, magazines, BookTok, etc.

Read in Library

Hold Placed

Interlibrary Loan (ILL) Requested

Checked Out

Returned

Material Challenged (See other side)



WISCONSIN
LIBRARY
ASSOCIATION

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When there is a BOOK CHALLENGE

Challenges to Library Materials

Libraries have policies and procedures in place to respectfully address a community member's concerns. It begins long before an item is placed in the collection.

How are **MATERIALS ADDED** to a library's collection?

- A locally appointed Library Board of Trustees develops a Collection Development Policy to guide its library's selection of materials.
- Local library staff use their training and expertise, professional book reviews, and patron requests to purchase materials that fit the Library Board's Collection Development Policy and reflect the needs and interests of the local community.
- Librarians locate materials in the library based on their professional expertise, knowledge of the community, and the Collection Development Policy.

What process does a library use to deal with a **MATERIALS CHALLENGE** ?

The library's board-approved Collection Development Policy details a process for responding to materials challenges:

- When a patron notifies the library of an item they believe should be removed or relocated, staff provide the patron with a materials-reconsideration form that allows the patron to express their concerns.
- Staff review the submission; read, listen, or watch the item in its entirety; and determine whether the item complies with the Collection Development Policy.
- The Library Director notifies the patron in writing of its decision. The patron has the opportunity to appeal the decision to the Library Board.
- If the patron appeals the decision, the Library Board conducts its own review in relation to the Collection Development Policy. The Library Board notifies the patron of its decision in writing.



Always feel free to talk to your local library director with questions or concerns.



WISCONSIN
LIBRARY
ASSOCIATION

wisconsinlibraries.org
wla@wisconsinlibraries.org

SOME LIBRARY “LAW” SITUATIONS

- Board roles and Director’s performance
 - One of the Board’s responsibilities is to evaluate the Director and execute performance reviews. Consistent reviews ensure that the Director understands where performance needs improvement.
 - Board is responsible for library oversight per statute. See #6, evaluating the Director in the DPI Trustee’s Essentials linked on the next slide.
- City officials and library boards
 - Finances – 43.58(2): Library Board shall audit and approve all expenditures.
 - Library Boards tend to have more autonomy, but do not hold the purse strings.
 - Library Boards control number of employees and salaries. League of Municipalities has determined that library employees are held to the same standards as municipal employees.
- Retention of council
 - Highly situation-specific but proceed with caution. The Board is still part of the municipality – speak with your system contacts.
- Patron privacy v. reporting to law enforcement
 - 43.30 – when library records may be disclosed. (Patriot Act too)
- Shared Services and HR
 - Smaller libraries can work with municipal governments – can’t go against Chapter 43, but some shared services are conceivable.
- Transitioning from joint to non-joint library
 - Close partnership with the single municipality – dependent on the end goal, but the transition likely involves retaining many characteristic but reconfiguring with the single municipality. See 43.52(1M) for establishing new public libraries for guidance.
- Remember, statutes are general guideposts – you can point to them for help, but details are either hashed out elsewhere or via local workflows.



RESOURCES TO REVIEW

- [A guide to reading and applying statutes](#)
- [WLA's handout on the life cycle of a book and mechanics of a book challenge](#)
- Wisconsin Statutes:
 - [Chapter 43](#)
 - [Chapter 19](#)
 - [DPI Public Library Admin Code](#)
- Department of Public Instruction:
 - [Trustee Essentials](#) (last updated 2020)
 - [Legal Resources about libraries](#)
- WI League of Municipalities:
 - [FAQs on relationship between library boards and municipalities](#)
 - [Open Meeting Law FAQs](#)
 - [An overview of municipal library boards](#)
- WI Department of Justice:
 - [Open Meeting and Public Records Law overview](#)
 - [DOJ Open Meetings Law compliance law](#)
 - [Attorney General Opinions \(back to 1911\)](#)



WHO TO ASK

- Library System staff – not sure which system you're in? [Here's a map!](#)
- Municipal Attorneys
- Department of Public Instruction (but only after checking with your Library System)
- Wisconsin Library Association (for referrals)

Or me, now!

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