

North Dakota Library Law



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CHAPTER 40-38 PUBLIC LIBRARIES

Section

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40-38-01. Public library and reading room - Establishment.

The governing body of any city or county upon petition of not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election or upon a majority vote of the qualified electors thereof voting on the question shall establish and maintain public library service within its geographic limits by means of a public library and reading room or other public library service, either singly or in cooperation with the state library, or with one or more cities or counties, or by participation in an approved state plan for rendering public library service under the Library Services and Construction Act [20 U.S.C. 351-358], and acts amendatory thereof. Such question shall be submitted to the qualified electors upon resolution of the governing body or upon the petition of not less than twenty-five percent of that number of qualified electors of the city or county that voted at the last general election, filed with the governing body not less than sixty days before the next regular election. Library service may be discontinued within any city or county by any of the methods by which library services may be established, except that once established, such service shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

History

Source: S.L. 1887, ch. 56, § 1; R.C. 1895, § 2467; R.C. 1899, § 2467; S.L. 1901, ch. 97, § 1; R.C. 1905, § 2972; S.L. 1909, ch. 155, § 1; 1911, ch. 179, § 1; C.L. 1913, § 4007; R.C. 1943, § 40-3801; S.L. 1945, ch. 260, § 1; 1957, ch. 352, § 1; 1957 Supp., § 40-3801; S.L. 1965, ch. 352, § 4; 1971, ch. 410, § 1; 1979, ch. 550, § 1; 1985, ch. 235, § 86; 1997, ch. 108, § 26.

Annotations

Effective Date: The 1997 amendment of this section by section 26 of chapter 108, S.L. 1997 became effective August 1, 1997.

Note: The Library Services and Construction Act is now compiled as 20 U.S.C., §§ 351-364.

Cross-References. Historical society, municipality may furnish rooms in public library for, see § 11-11-52.

State aid to libraries, see ch. 54-24.2.

Collateral References.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 542.

62 C.J.S. Municipal Corporations, § 679; 63 C.J.S. Municipal Corporations, § 1041; 64 C.J.S. Municipal Corporations, § 1995.

40-38-02. Library fund - Levy - Kept separate - Exemption for city levying tax - Increasing levy.

1. For the purpose of establishing and maintaining public library service, the governing body of a municipality or county authorizing the same shall establish a library fund. The library fund shall consist of annually levying and causing to be collected as other taxes are collected, a municipal or county tax not exceeding the limitations in subsection 15 of section 57-15-06.7 and subsection 5 of section 57-15-10 and any other moneys received for library purposes from federal, state, county, municipal, or private sources.
2. The city auditor or county treasurer shall establish and maintain the fund to account for library revenues and shall make payments from the fund for invoices that have been submitted and approved by the governing body of the library. In the case of a contract with another library for service delivery, the city auditor or county treasurer shall promptly transmit all funds received to the established library fund of the agency delivering service. On request of the city auditor or county treasurer and during an audit, the governing board of the library shall supply its records. The records must be provided on a timely basis. The fund may not revert to the governing body of the city or county at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of public library service.
3. Whenever a tax for county library service is levied, any city already levying a tax for public library service under the provisions of this section or other provisions of law shall, upon written application to the county board of the county, be exempted from the county tax levy to the extent that the city making the application levies taxes for a library fund during the year for which the tax levy is made. If the city has been totally exempted from participation in any prospective county library program, the phrase "not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election" as stated in section 40-38-01 shall mean fifty-one percent of the total number of votes cast at the last general election in the county less the total number of votes cast at the last general election in the city. If an election on the question is held, the qualified electors of any city so exempted from the county library

tax shall not be entitled to vote on the establishment or discontinuance of the county library service.

4. Upon motion of the governing body or upon petition of not less than twenty-five percent of the qualified electors in the last general election of any city, school district, township, or county, filed not less than sixty days before the next election, the governing body shall submit to the qualified electors at the next election the question of whether the governing body shall increase the mill levy a specified amount for public library service above the mill levy limitation set out in this section. The governing body may call a special election at any time for the purpose of voting on the question, and the election shall be called, conducted, and certified as are other elections in that political subdivision. Upon approval by sixty percent of the qualified electors voting in the election, the governing body shall increase the levy for public library service in the amount approved by the qualified electors.

History

Source: S.L. 1887, ch. 56, § 1; R.C. 1895, § 2467; R.C. 1899, § 2467; S.L. 1901, ch. 97, § 1; R.C. 1905, § 2972; S.L. 1909, ch. 155, § 1; 1911, ch. 179, § 1; C.L. 1913, § 4007; R.C. 1943, § 40-3802; S.L. 1945, ch. 260, § 2; 1955, ch. 276, § 1; 1957, ch. 352, § 2; 1957 Supp., § 40-3802; S.L. 1965, ch. 352, § 5; 1971, ch. 410, § 2; 1973, ch. 333, § 1; 1981, ch. 418, § 1; 1983, ch. 463, § 1; 1983, ch. 593, § 23; 1983, ch. 606, § 41; 1985, ch. 235, § 87; 1987, ch. 78, § 3.

Annotations

Note: Subsection 1 of section 40-38-02 was amended twice by the 1983 Legislative Assembly. Section 23 of chapter 593, S.L. 1983, replaced net taxable assessed valuation with taxable valuation. Section 41 of chapter 606, S.L. 1983, incorporated the tax levy limitation by reference rather than by specific language. The amendments made by chapter 593 were contained in the amendments made by chapter 606 and the subsection was printed as it appears in chapter 606.

Cross-References. Tax levy limitations, see § 57-15-08.

Inclusion in General Tax.

General tax referred to and authorized by C.L. 1913, § 3680 (section 40-40-09) did not include the tax authorized by this statute for library purposes. *State ex rel. Arnot v. Flaherty*, 45 N.D. 549, 178 N.W. 790 (1920).

40-38-03. Board of directors - Appointment - Term of office – Compensation - Filling vacancies - Organization.

1. The governing body of a municipality that has established a public library and reading room, or the board of county commissioners for a county library, shall appoint a board of five directors who must be residents of the municipality or county, as the case may be, to govern the library and reading room. One member of the governing body of the municipality or designated representative must be a member of the board of directors of a municipal library, and must be a resident of the municipality that establishes and maintains the municipal library; and one member of the board of county commissioners or designated representative must be a member of the county board of directors.

2. The terms of office of the members of the first board of directors must be established so one member holds office for one year, two members hold office for two years, and two

members hold office for three years. The members, at their first meeting, shall determine the length of their respective terms by lot. Thereafter, the number of directors required to fill expired terms must be appointed each year, and each director may hold office for a term of three years from the first day of July in the year of appointment and until a successor has been appointed. No member of the board may serve for more than two consecutive terms, after which an interval of one year must elapse before the same member may be reappointed. All vacancies on the board of directors must be reported by the board to the governing body of the municipality or the board of county commissioners, as the case may be, and must be filled thereby. An appointment to fill an unexpired term may be for the residue of the term only.

3. A director is entitled to payment for mileage and travel expenses as provided for in sections 44-08-04 and 54-06-09. No other compensation may be paid or allowed to a director unless the governing body of the municipality or the board of county commissioners provides by ordinance or by resolution for the payment of compensation for members of the board of directors.

4. Immediately after the appointment of its members, the board of directors shall meet and organize by electing a president. The governing board of a municipality or county establishing public library service may, in lieu of appointing a library board, contract directly with a library board established by another governing body of a municipality or county for the purpose of extending public library service.

History

Source: S.L. 1887, ch. 56, §§ 2, 3; R.C. 1895, §§ 2468, 2469; R.C. 1899, §§ 2468, 2469; R.C. 1905, §§ 2973, 2974; S.L. 1909, ch. 155, § 1; C.L. 1913, §§ 4008, 4009; R.C. 1943, § 40-3803; S.L. 1945, ch. 260, § 3; 1957 Supp., § 40-3803; S.L. 1961, ch. 158, § 82; 1965, ch. 352, § 6; 1967, ch. 323, § 190; 1969, ch. 377, § 1; 1971, ch. 410, § 3; 1973, ch. 333, § 2; 1975, ch. 379, § 1; 2011, ch. 298, § 1.

40-38-04. General powers and duties of board of directors.

The board of directors shall have the following powers and duties:

1. To make and adopt such bylaws, rules, and regulations relating to the duties of the officers of the board as may be expedient and not inconsistent with the provisions of this chapter.
2. To make and adopt such bylaws, rules, and regulations for the management of the library and reading room as are expedient and not inconsistent with the provisions of this chapter.
3. To control, exclusively, the expenditures of all moneys collected for or contributed to the library fund.
4. To have the supervision, care, and custody of the library property, and of the rooms or buildings constructed, leased, or set apart for use of library purposes.

5. To contract to furnish library service and to receive library service from other counties, school districts, and cities of the state of North Dakota and adjoining states, and the state library.

6. To employ qualified personnel to administer the public library and dispense library services.

History

Source: S.L. 1887, ch. 56, § 3; R.C. 1895, § 2469; R.C. 1899, § 2469; R.C. 1905, § 2974; S.L. 1909, ch. 155, § 1; C.L. 1913, § 4009; R.C. 1943, § 40-3804; S.L. 1945, ch. 260, § 4; 1957 Supp., § 40-3804; S.L. 1973, ch. 333, § 3; 1975, ch. 379, § 2; 1975, ch. 380, § 1; 1979, ch. 550, § 2.

40-38-05. Board of directors may purchase, build, or lease building for library - Library building fund - Public hearing required.

The board of directors, with the approval of the city or county governing body, may build, lease, lease-purchase, or purchase an appropriate building for a library and purchase a site therefor. Such lease, purchase, or contract shall not be valid without the approval of the governing body of the city or county. Prior to any actions on such proposals, the governing body shall hold a public hearing on the proposals. Notice of the hearing shall be published at least once, not less than six days prior to the hearing, in a newspaper of general circulation within the city or county. The governing body shall seek the advice and comment of the state library and the general public at the hearing. After such hearing, the governing body of a city or county may establish by resolution a library building fund for the purpose of construction, enlargement, or alteration of a building or for the purchase of an existing building to be used as a public library. The city auditor or county treasurer shall place in the library building fund all moneys for such purposes as may be appropriated by the governing body or received for such purposes from federal, state, county, city, or private sources. The library building fund shall not revert to the library general fund or the general fund of the city or county without authorization by formal resolution from both the library's board of directors and the governing body of the city or county.

History

Source: S.L. 1887, ch. 56, § 3; R.C. 1895, § 2469; R.C. 1899, § 2469; R.C. 1905, § 2974; S.L. 1909, ch. 155, § 1; C.L. 1913, § 4009; R.C. 1943, § 40-3805; S.L. 1945, ch. 260, § 5; 1957 Supp., § 40-3805; S.L. 1961, ch. 158, § 83; 1973, ch. 333, § 4; 1979, ch. 550, § 3.

40-38-06. Vouchers - How drawn.

The duly bonded secretary or treasurer of the board of directors may draw money from the library fund upon vouchers of the board of directors without any other audit.

History

Source: S.L. 1887, ch. 56, § 3; R.C. 1895, § 2469; R.C. 1899, § 2469; R.C. 1905, § 2974; S.L. 1909, ch. 155, § 1; C.L. 1913, § 4009; R.C. 1943, § 40-3806; S.L. 1981, ch. 418, § 2.

40-38-07. Library free to inhabitants of political subdivision - Subject to rules published by board of directors.

Statute text

Every library and reading room established under this chapter shall be free for the use of inhabitants of the political subdivision where it is located subject to such reasonable rules and regulations as the board of directors may deem necessary to adopt and publish to render the use of the library and reading room of the greatest benefit. The board may exclude from the use of the library and reading room any and all persons who willfully shall violate such rules.

History

Source: S.L. 1887, ch. 56, § 4; R.C. 1895, § 2470; R.C. 1899, § 2470; R.C. 1905, § 2975; S.L. 1909, ch. 155, § 1; C.L. 1913, § 4010; R.C. 1943, § 40-3807.

40-38-08. Donations - How accepted - Board of directors as trustee.

All persons desirous of making donations of money, books, personal property, or real estate for the benefit of the library may vest the same in the board of directors. The board shall hold and control all property accepted for the use of the library and reading room as a special trustee.

History

Source: S.L. 1887, ch. 56, § 6; R.C. 1895, § 2472; R.C. 1899, § 2472; R.C. 1905, § 2977; S.L. 1909, ch. 155, § 1; C.L. 1913, § 4012; R.C. 1943, § 40-3808; S.L. 1949, ch. 276, § 1; 1957 Supp., § 40-3808; S.L. 1981, ch. 418, § 3.

40-38-09. Annual report of board of directors - Contents - To whom made.

The board of directors shall make a report on July first of each year to the governing body of the city or board of county commissioners, as the case may be, stating:

1. The condition of the library and property.
2. The various sums of money received from all sources.
3. How much money has been expended and for what purpose.
4. The number of books and periodicals on hand.
5. The number of books and periodicals added by purchase or gift during the year and the number thereof lost or loaned out.
6. The character and kind of books contained in the library.

7. Such other statistics, information, and suggestions as the board may deem of general interest or as may be required by the state library.

Copies of the report shall be filed with the governing body of the political subdivision and with the state library.

History

Source: S.L. 1887, ch. 56, § 5; R.C. 1895, § 2471; R.C. 1899, § 2471; R.C. 1905, § 2976; S.L. 1909, ch. 155, § 1; C.L. 1913, § 4011; R.C. 1943, § 40-3809; S.L. 1945, ch. 260, § 6; 1957 Supp., § 40-3809; S.L. 1973, ch. 333, § 5; 1979, ch. 550, § 4

40-38-10. Contributions by political subdivision to establishment of library without election authorized.

To aid and facilitate the organization of library service, the governing body of any city where the population is less than two thousand five hundred may appropriate annually from its general fund, or from any other moneys received for library purposes from federal, state, and private sources, a sum not to exceed five dollars per capita for the purchase of books and periodicals to remain the property of the city and to be loaned to any local library for free public use. The governing body shall appoint a book committee of three which shall select the books and periodicals from standard and recommended lists furnished by the state library. The selection so made by such committee shall be submitted to the governing body for approval and purchase by such governing body; provided, that the amount so expended for such books and periodicals shall be within the amount appropriated therefor. Books and periodicals purchased with this fund shall be properly stamped as belonging to the city. Such appropriation shall be made and books and periodicals purchased without submitting the same to vote as provided in section 40-38-02. As an alternative, the governing body may contract with a library operated by a city, county, school district, or the state library for the provision of public library service for the city.

History

Source: S.L. 1887, ch. 56, § 7; R.C. 1895, § 2473; R.C. 1899, § 2473; R.C. 1905, § 2978; S.L. 1909, ch. 155, § 1; C.L. 1913, § 4013; R.C. 1943, § 40-3810; S.L. 1945, ch. 260, § 7; 1957 Supp., § 40-3810; S.L. 1967, ch. 323, § 191; 1973, ch. 333, § 6; 1979, ch. 550, § 5.

40-38-11. Joint public library services by cities and counties.

1. Upon compliance with section 40-38-01 for the establishment of public library services, public library services may be jointly provided through a written agreement between the governing bodies of any city or county or both to establish and maintain joint library services with one or more cities or counties or both.

2. A party shall be bound to an agreement entered into under subsection 1 for an initial five-year term and subsequent five-year terms unless it provides other parties to the agreement with notice of intent to withdraw from the agreement at least two years before the proposed date of withdrawal.

3. The parties to the agreement shall appoint a single joint library board to govern public library services covered by the agreement. The method of representation on the joint library board and the establishment of the initial board with staggered terms shall be determined in the agreement. Provided, the joint library board shall consist of an equal number of appointees from each party to the agreement and, in any case, shall consist of not less than five members nor more than eleven members. No member of the board shall serve for more than two consecutive three-year terms, after which an interval of one year must elapse before the same member may be reappointed.

4. The joint library board shall have all power and duties provided in sections 40-38-04 through 40-38-09.

5. A joint library fund shall be established for the public library services covered by the agreement. Each city or county represented in the agreement shall provide its pro rata share of funds for the services, as specified in the agreement, from the funds received under section 40-38-02. Taxes within the service area covered by the written agreement under subsection 1 which is outside city limits may be levied within the limitations and according to the procedures provided by law for a county library fund levy and taxes within the service area that is within city limits may be levied within the limitations and according to the procedures provided by law for a city library fund levy.

6. The joint library board shall appoint, and may remove, a treasurer to administer the joint library fund. The treasurer may be a treasurer of one of the parties to the agreement or a member of the board or both. The city auditor and county treasurer of each city or county represented in the agreement and the state librarian shall promptly transmit all funds authorized under subsection 5 and chapter 54-24.2, respectively, directly to the treasurer of the joint library board. The treasurer shall pay out moneys belonging to the joint library board only upon properly drawn vouchers, pursuant to order of the joint library board. The funds received by the treasurer shall not revert to or be considered funds on hand by any governmental unit furnishing the same, at the end of any biennium or fiscal year. The treasurer shall be bonded in such amount as may be specified by resolution adopted by the joint library board.

7. The agreement shall include provisions for the dissolution of the joint library board and distribution of assets in the event the agreement is terminated.

8. Joint libraries established and operated under this section are eligible to receive financial aid under chapter 54-24.2 to the extent that each city and county represented in the agreement would be eligible for the aid.

9. Agreements for public library services between cities or counties or both may be provided under this section or other provisions of this chapter and may not be provided under chapter 54-40 or other provisions of law.

10. After July 1, 1981, the establishment of joint library services pursuant to this section shall not be permitted unless approved by the electors of each individual city or county considering the question.

History

[Source.S.L. 1965, ch. 352, § 2; 1971, ch. 411, § 1; 1979, ch. 550, § 6; 1981, ch. 418, § 4; 2005, ch. 348, § 1.]

Annotations

Effective Date. - The 2005 amendment of this section by section 1 of chapter 348, S.L. 2005 is effective for taxable years beginning after December 31, 2004, pursuant to section 2 of chapter 348, S.L. 2005.

40-38-12. Library records - Open records exception.

Any record maintained or received by a library receiving public funds, which provides a library patron's name or information sufficient to identify a patron together with the subject about which the patron requested information, is considered private and is excepted from the public records disclosure requirements of section 44-04-18. These records may be released when required pursuant to a court order or a subpoena.

History

Source: S.L. 1985, ch. 464, § 1.

CHAPTER 44-04
DUTIES, RECORDS, AND MEETINGS

44-04-17.1. Definitions.

Statute text

As used in this section through section 44-04-21.2:

1. "Closed meeting" means all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purposes of a closed meeting may be admitted.
2. "Closed record" means all or part of an exempt record that a public entity in its discretion has not opened to the public.
3. "Confidential meeting" or "confidential record" means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.
4. "Executive session" means all or part of a meeting that is closed or confidential.
5. "Exempt meeting" or "exempt record" means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.
6. "Governing body" means the multimember body responsible for making a collective decision on behalf of a public entity. "Governing body" also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.
7. "Law" includes federal statutes, applicable federal regulations, and state statutes.
8. a. "Meeting" means a formal or informal gathering, whether in person or through other means such as telephone or video conference, of:
 - (1) A quorum of the members of the governing body of a public entity regarding public business; or
 - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.b. "Meeting" includes work sessions, but does not include chance or social gatherings where public business is not considered and does not include the attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.
 - c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.
9. "Organization or agency supported in whole or in part by public funds" means an

organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.

10. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.

11. "Public business" means all matters that relate or may foreseeably relate in any way to:

- a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
- b. The public entity's use of public funds.

12. "Public entity" means all:

- a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;
- b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and
- c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.

13. "Public funds" means cash and other assets with more than minimal value received from the state or any political subdivision of the state.

14. "Quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.

15. "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.

16. "Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.

History

Source: S.L. 1997, ch. 381, § 2; 2001, ch. 393, §§ 3, 4.

Annotations

Effective Date: The 2001 amendment of this section by sections 3 and 4 of chapter 393, S.L. 2001 became effective August 1, 2001.

Note: Section 44-04-17.1 was amended twice by the 2001 Legislative Assembly.

Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in sections 3 and 4 of chapter 393, S.L. 2001.

44-04-18. Access to public records - Electronically stored information.

Statute text

1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.
2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. The entity may charge a reasonable fee for making or mailing the copy, or both. An entity may require payment before making or mailing the copy, or both. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. As used in this subsection, "reasonable fee" means the actual cost to the public entity of making or mailing a copy of a record, or both, including labor, materials, postage, and equipment, but excluding any cost associated with excising confidential or closed material under section 44-04-18.10. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.
3. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a

printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal.

4. A state-level public entity as defined in subdivision a of subsection 12 of section 44-04-17.1 may establish procedures for providing access from an outside location to any computer data base or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity, the entity may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.

5. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action or adversarial administrative proceeding in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules and be made to the attorney representing that entity in the criminal or civil action or adversarial administrative proceeding. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.

6. A denial of a request for records made under this section must describe the legal authority for the denial and must be in writing if requested.

7. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsection 2.

8. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.

9. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.

History

Source: S.L. 1957, ch. 305, § 1; R.C. 1943, 1957 Supp., § 44-0418; S.L. 1977, ch. 416, § 1; 1993, ch. 441, § 1; 1997, ch. 381, § 3; 1999, ch. 104, § 2; 2001, ch. 393, §§ 5, 6;

2003, ch. 48, § 33.

Annotations

Effective Date: The 2003 amendment of this section by section 33 of chapter 48, S.L. 2003 became effective August 1, 2003.

The 2001 amendment of this section by sections 5 and 6 of chapter 393, S.L. 2001 became effective August 1, 2001.

The 1999 amendment of this section by section 2 of chapter 104, S.L. 1999 became effective August 1, 1999.

Note: Section 44-04-18 was amended twice by the 2001 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in sections 5 and 6 of chapter 393, S.L. 2001.

Cross-References. Access to economic feasibility institute records, see § 15-12-26.

Archival resources, public access to, see §§ 55-02.1-07, 55-02.1-08.

Disclosure of domestic violence program records, see § 14-07.1-18.

For applicability of provision for access to legislative records and information, see § 44-04-18.6.

Tampering with public records prohibited, penalty, see § 12.1-11-05.

44-04-18.10. Disclosure of public records.

Statute text

1. A public entity may not deny a request for an open record on the ground that the record also contains confidential or closed information.
2. Subject to subsection 3 of section 44-04-18, if confidential or closed information is contained in an open record, a public entity shall permit inspection and receipt of copies of the information contained in the record that is not confidential or closed, but shall delete, excise, or otherwise withhold the confidential or closed information.
3. An officer or employee of a public entity may disclose or comment on the substance of an open record. Any agreement prohibiting the disclosure or comment is void and against public policy.
4. Unless otherwise prohibited by federal law, records of a public entity which are otherwise closed or confidential may be disclosed to any public entity for the purpose of law enforcement or collection of debts owed to a public entity, provided that the records are not used for other purposes and the closed or confidential nature of the records is otherwise maintained. For the purpose of this subsection, "public entity" is limited to those entities defined in subdivision a or b of subsection 12 of section 44-04-17.1.

History

Source: S.L. 1997, ch. 381, § 4.

44-04-18.11. Disclosure pursuant to subpoena or order.

Statute text

1. Unless disclosure under a court order is otherwise prohibited or limited by law, closed records must be disclosed pursuant to a subpoena issued by a court, administrative law judge, or administrative hearing officer, or other court order.

2. Unless disclosure under a court order is otherwise prohibited or limited by law, confidential records must be disclosed pursuant to a court order. Upon request of the public entity ordered to make the disclosure, the court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.

3. Any person who discloses confidential records of a public entity under this section is immune from prosecution for violating section 12.1-13-01.

History

Source: S.L. 1997, ch. 381, § 5.

44-04-19. Access to public meetings.

Statute text

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. That portion of a meeting of the governing body of a public entity as defined in subdivision c of subsection 12 of section 44-04-17.1 which does not regard public business is not required to be open under this section.

1. This section is violated when any person is denied access to a meeting under this section, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the person or persons seeking access.

2. For purposes of this section, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting.

3. The right of a person to attend a meeting under this section includes the right to photograph, to record on audio or video tape and to broadcast live on radio or television the portion of the meeting that is not held in executive session, provided that there is no active interference with the conduct of the meeting. The exercise of this right may not be dependent upon the prior approval of the governing body. However, the governing body may impose reasonable limitations on recording activity to minimize the possibility of disruption of the meeting.

4. For meetings subject to this section where one or more of the members of the governing body is participating by telephone or video, a speakerphone or monitor must be provided at the location specified in the notice issued under section 44-04-20.

History

Source: S.L. 1957, ch. 306, § 1; R.C. 1943, 1957 Supp., § 44-0419; S.L. 1977, ch. 417, § 1; 1997, ch. 381, § 13.

Annotations

Cross-References. For applicability of provision for access to legislative records and information, see § 44-04-18.6.

Open meetings of public and governmental bodies, see N.D. Const., Art. XI, § 5.

44-04-19.2. Confidential or closed meetings.

Statute text

1. A governing body may hold an executive session to consider or discuss closed or confidential records.
2. Unless a different procedure is provided by law, an executive session that is authorized by law may be held if:
 - a. The governing body first convenes in an open session and, unless a confidential meeting is required, passes a motion to hold an executive session;
 - b. The governing body announces during the open portion of the meeting the topics to be discussed or considered during the executive session and the body's legal authority for holding an executive session on those topics;
 - c. The executive session is recorded under subsection 5;
 - d. The topics discussed or considered during the executive session are limited to those for which an executive session is authorized by law and that have been previously announced under this subsection; and
 - e. Final action concerning the topics discussed or considered during the executive session is taken at a meeting open to the public, unless final action is otherwise required by law to be taken during a closed or confidential meeting. For purposes of this subsection, "final action" means a collective decision or a collective commitment or promise to make a decision on any matter, including formation of a position or policy, but does not include guidance given by members of the governing body to legal counsel or other negotiator in a closed attorney consultation or negotiation preparation session authorized in section 44-04-19.1.
3. The remainder of a meeting during which an executive session is held is an open meeting unless a specific exemption is otherwise applicable.
4. The minutes of an open meeting during which an executive session is held must indicate the names of the members attending the executive session, the date and time the executive session was called to order and adjourned, a summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, and the legal authority for holding the executive session.
5. All meetings of the governing body of a public entity that are not open to the public must be recorded electronically or on audiotape or videotape. The recording must be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or to the attorney general for the purpose of administrative review under section 44-04-21.1. The attorney general may not disclose to the public any recording received under this subsection and must return the recording to the governing body upon completion of the administrative review. The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as provided in this subsection is a violation of section 12.1-13-01. All recordings under this subsection must be retained for a minimum of six months after the executive session that is the subject of the recording.

History

Source: S.L. 1997, ch. 381, § 14; 2001, ch. 393, § 10.

Annotations

Effective Date: The 2001 amendment of this section by section 10 of chapter 393, S.L. 2001 became effective August 1, 2001.

44-04-20. Notice of public meetings required - Exceptions - Schedule set by statute, ordinance, or resolution.

1. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1, including executive sessions, conference call meetings, and video conferences. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public entity, notices required by this section need not be published.
2. The notice required in this section must contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice must also contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by telephone or video conference, the location of the meeting and the place the meeting is held is the location of a speakerphone or monitor as required under section 44-04-19.
3. In cases where the governing body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually in January with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies. This schedule must be furnished to anyone who requests the information. When reasonable and practicable, a governing body of a public entity should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
5. The governing body's presiding officer has the responsibility of assuring that such public notice is given at the same time as such governing body's members are notified, and that this notice is available to anyone requesting such information.

6. In the event of emergency or special meetings of a governing body, the person calling such a meeting shall also notify the public entity's official newspaper, if any, and any representatives of the news media which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such governing body's members are notified. Topics that may be considered at an emergency or special meeting are limited to those included in the notice to the media.

7. A committee of an institution under the authority of the state board of higher education, in lieu of the notice requirements in this section, may file in the office of the president of the institution the name, address, and telephone number of a person who may be contacted to obtain specific times, dates, and locations of any meetings of that committee or to request specific notification of each meeting of that committee.

8. The attorney general shall prepare general guidelines to assist public entities in following the provisions of this section.

9. This section is violated when a notice is not provided in substantial compliance with this section.

History

Source: S.L. 1979, ch. 477, § 1; 1983, ch. 493, § 1; 1987, ch. 539, § 1; 1991, ch. 477, § 1; 1997, ch. 381, § 17.

Annotations

Effective Date: The 1997 amendment of this section by section 17 of chapter 381, S.L. 1997 became effective August 1, 1997.

Special or Emergency Meetings.

The provision relative to special or emergency meetings is a substitute for the notice ordinarily required and is not an additional requirement for meetings held on short notice; it was not the intent of the legislature to require a more cumbersome notice for a special or emergency meeting than for a regularly scheduled meeting. *Quarles v. McKenzie Pub. Sch. Dist. No. 34*, 325 N.W.2d 662 (N.D. 1982).

44-04-21. Open voting at public meetings required - Results recorded in minutes.

Statute text

1. Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the provisions of section 44-04-19 must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. Procedural votes must be recorded roll call votes upon the request of any member of a governing body holding a meeting subject to this section. As used in this section, "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body.

2. Minutes must be kept of all open meetings and are records subject to section 44-04-18. The minutes must include, at a minimum:

- a. The names of the members attending the meeting;
- b. The date and time the meeting was called to order and adjourned;

- c. A list of topics discussed regarding public business;
- d. A description of each motion made at the meeting and whether the motion was seconded;
- e. The results of every vote taken at the meeting; and
- f. The vote of each member on every recorded roll call vote.

Notwithstanding subsection 8 of section 44-04-18, the disclosure of minutes kept under this subsection may not be conditioned on the approval of the minutes by the governing body.

History

Source: S.L. 1979, ch. 478, § 1; 1997, ch. 381, § 18.

Annotations

Recorded Roll Call

Failure of a county committee to take a recorded roll call vote on an annexation petition is not an adequate reason for the state board of public school education to deny an annexation petition or to remand the matter to the county committee for rehearing. In re Annexation of Part of Donnybrook Pub. Sch. Dist. No. 24, 365 N.W.2d 514 (N.D. 1985).

CHAPTER 54-24
STATE LIBRARY COMMISSION

Section

- 54-24-01. State library - State librarian appointed by the superintendent of public instruction.
- 54-24-02. Library offices.
- 54-24-03. Powers and duties of state librarian.
- 54-24-03.1. Acceptance of federal aid.
- 54-24-04. Who may borrow books from state library.
- 54-24-05. Commission to give advice and aid.
- 54-24-06. Records kept by commission - Report to the governor and secretary of state.
- 54-24-07. Printing of state library - How paid.
- 54-24-08. Library contracts for library services.
- 54-24-09. Distribution of certain state publications for certain libraries required.

54-24-01. State library - State librarian by the superintendent of public instruction.

The superintendent of public instruction shall appoint an executive officer to be known as the state librarian, who shall report to the superintendent and must receive a salary within the amount appropriated for salaries by the legislative assembly. The state librarian shall control the work and is the director of the state library. The position of state librarian is included in the classified service, as provided in section 54-44.3-20. The state library is an autonomous agency and retains a budget and staff separate from that of the superintendent of public instruction.

History

Source: S.L. 1927, ch. 261, § 1; R.C. 1943, § 54-2401; S.L. 1979, ch. 550, § 7; 1981, ch. 535, § 15; 1989, ch. 239, § 14; 1997, ch. 13, § 23.

Annotations

Effective Date: The 1997 amendment of this section by section 23 of chapter 13, S.L. 1997 became effective July 1, 1997.

The 1989 amendment of this section became effective on January 1, 1991.

54-24-02. Library offices.

The state library must be furnished with adequate office room, with such suitable quarters as may be necessary for the proper shelving of its library materials.

History

Source: S.L. 1907, ch. 243, § 8; 1909, ch. 156, § 8; C.L. 1913, § 1537; R.C. 1943, § 54-2402; S.L. 1979, ch. 550, § 8; 1997, ch. 453, § 1.

Annotations

Effective Date: The 1997 amendment of this section by section 1 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24-03. Powers and duties of state librarian.

The state librarian shall:

1. Make rules for the operation of the state library.
2. Provide and care for all books and library materials in all collections of the state library and work to focus the collections.
3. Employ qualified library personnel to care for all library procedures.
4. Make library materials available to libraries throughout the state, to individuals connected with departments of state, and to citizens of North Dakota who do not have adequate library facilities, under the rules of the state library.
5. Work to improve library services to citizens by providing assistance to librarians and library trustees and staff and by encouraging the extension of networking and regional and statewide cooperation among libraries.
6. Coordinate the efforts of librarianship throughout the state, advising and assisting the extension of qualified public libraries into centers of county or multicounty libraries.
7. Compile statistics on all North Dakota public libraries and their services and their larger counterparts of county and multicounty libraries, regional library cooperatives including multitype library authorities, and of the work done at the state library, and make a full biennial report to the superintendent of public instruction and the governor. The state librarian may not require a private sector library to submit information relating to the provisions of this subsection.
8. Collect, maintain, and make available informational materials that supplement and support the needs of all libraries in the state, either by direct loan or by consultation, and that form a reference source for the officers of the state in performing their duties.
9. Assist libraries in developing local standards and guidelines defining the basic level of service that they will provide.
10. Conduct, or have conducted, research into the conditions of library service in the state and produce written plans for the development and betterment of that service.
11. Promote and assist in the development of regional library cooperatives, including multitype library authorities.
12. Establish levels of certification for libraries of the state that meet the standards recommended by the American library association and the North Dakota library association.
13. Promote and assist libraries in this state in developing and maintaining a

computerized, comprehensive, bibliographic statewide data base for storing bibliographic records of libraries which allows residents unmediated, seamless, direct access to library catalogs with a common interface and a common set of commands and the ability to search the library collections of the entire state at one time or only the collections of the local library, regional libraries, or select group of libraries.

14. Coordinate interlibrary loan activities throughout this state.
15. Arrange for continuing education and training programs for library personnel.
16. Provide technical assistance and counsel to library personnel.
17. Distribute grants to libraries within the limits of legislative appropriations for the purpose of developing or improving library services or programs.
18. Provide staff services to the North Dakota library coordinating council.

History

Source: S.L. 1907, ch. 243, § 5; 1909, ch. 156, § 5; C.L. 1913, § 1534; R.C. 1943, § 54-2403; S.L. 1965, ch. 352, § 8; 1979, ch. 550, § 9; 1989, ch. 239, § 15; 1997, ch. 453, § 2.

Annotations

Effective Date: The 1997 amendment of this section by section 2 of chapter 453, S.L. 1997 became effective July 1, 1997.

The 1989 amendment of this section became effective on January 1, 1991.

54-24-03.1. Acceptance of federal aid.

The state library is hereby authorized to accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes. For the purpose of qualifying to receive such grants, the state library is authorized to make such applications and reports as may be required by the federal government as a condition thereto.

History

Source: S.L. 1949, ch. 320, § 1; R.C. 1943, 1957 Supp., § 54-24031; S.L. 1979, ch. 550, § 10.

54-24-04. Who may borrow books from state library. Repealed by S.L. 1965, ch. 352, § 10.

54-24-05. Commission to give advice and aid. Repealed by S.L. 1965, ch. 352, § 10.

54-24-06. Records kept by commission - Report to the governor and secretary of state. Repealed by S.L. 1965, ch. 352, § 10.

54-24-07. Printing of state library - How paid. Repealed by S.L. 1997, ch. 453, § 20.

54-24-08. Library contracts for library services.

The state library is hereby authorized and empowered to cooperate with, and to contract with, cities, governmental subdivisions, and agencies of the state of North Dakota and other states of the United States, in the extension of library services.

History

Source: S.L. 1957, ch. 352, § 6; R.C. 1943, 1957 Supp., § 54-2408; S.L. 1967, ch. 389, § 1; 1979, ch. 550, § 12.

54-24-09. Distribution of certain state publications for certain libraries required.

The office of management and budget shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution. These publications must be provided to the state library without charge. If expense and limited supply of state publications, particularly audiovisual items, make compliance with the depository requirement impossible, the state library shall accept as many copies as an agency can afford to provide. However, each agency shall provide no less than two copies to the state library. State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. In circumstances not directly involving the office of management and budget, a state agency shall comply with the depository requirement by arranging with the necessary parties for the printing and deposit of eight copies of any state publication issued. State publications are specifically defined as public documents appearing as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations, newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not those administrative or training materials used only within the issuing agency. As the document acquisition and distribution agency, the state library shall retain for its document collection two copies of every state document received and transmit the remaining copies to the depository libraries. These are the libraries of the state historical board, the university of North Dakota, North Dakota state university, library of Congress, and two others to be designated by the state library. All nondepository North Dakota libraries may receive state documents under an optional selection program developed by the state library. The state library shall catalog state publications and arrange for their conversion to microfilm or to optical disk storage prescribed by the state records administrator and shall make available for distribution the same to the designated depository libraries.

History

Source: S.L. 1965, ch. 352, § 1; 1971, ch. 503, § 1; 1977, ch. 492, § 1; 1979, ch. 550, § 13; 1991, ch. 624, § 4; 1997, ch. 453, § 3; 1999, ch. 474, § 8.

Annotations

Effective Date: The 1999 amendment of this section by section 8 of chapter 474, S.L. 1999 became effective August 1, 1999.

The 1997 amendment of this section by section 3 of chapter 453, S.L. 1997 became effective July 1, 1997.

CHAPTER 54-24.1
INTERSTATE LIBRARY COMPACT

Section

- 54-24.1-01. Interstate Library Compact.
- 54-24.1-02. Must comply with state and local laws.
- 54-24.1-03. Definition.
- 54-24.1-04. Entitled to state aid.
- 54-24.1-05. Interstate library compact director - Appointment - Deputy.
- 54-24.1-06. Duties of governor in case of withdrawal.

54-24.1-01. Interstate Library Compact.

The Interstate Library Compact is hereby enacted into law and entered into by this state with all states legally joining therein in the form substantially as follows:

ARTICLE I - POLICY AND PURPOSE

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

ARTICLE II – DEFINITIONS

As used in this compact:

1. "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.
2. "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.
3. "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

ARTICLE III - INTERSTATE LIBRARY DISTRICTS

1. Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain, and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private

library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

2. Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

3. If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

a. Undertake, administer, and participate in programs or arrangements for securing, lending, or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

b. Accept for any of its purposes under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, corporation, or limited liability company, and receive, utilize, and dispose of the same.

c. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

d. Employ professional, technical, clerical, and other personnel, and fix terms of employment, compensation, and other appropriate benefits; and, where desirable, provide for the inservice training of such personnel.

e. Sue and be sued in any court of competent jurisdiction.

f. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

g. Construct, maintain, and operate a library, including any appropriate branches thereof.

h. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

ARTICLE IV - INTERSTATE LIBRARY DISTRICTS

GOVERNING BOARD

1. An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing board of not more than five members to be selected by the boards of the participating agencies which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district must be represented on the governing board which must be organized and conduct its business in accordance with provision therefor in the library agreement; but, in no event may a governing board meet less often than twice a year.

2. Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

ARTICLE V - STATE LIBRARY AGENCY COOPERATION

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service, or arrangement must contain provisions covering the subjects detailed in Article VI of the compact for interstate library agreements.

ARTICLE VI - LIBRARY AGREEMENTS

1. In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact must, as among the parties to the agreement:

- a. Detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable.
- b. Provide for the allocation of costs and other financial responsibilities.
- c. Specify the respective rights, duties, obligations, and liabilities of the parties.
- d. 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 appropriate to the proper effectuation and performance of the agreement.

2. No public or private library agency may undertake to exercise itself, or, jointly with any other library agency, by means of a library agreement, any power prohibited to such agency by the constitution or statutes of its state.

3. No library agreement becomes effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

ARTICLE VII - APPROVAL OF LIBRARY AGREEMENTS

1. Every library agreement made pursuant to this compact must, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to

disapprove an agreement submitted hereunder within ninety days of its submission constitutes approval thereof.

2. In the event that a library agreement made pursuant to this compact deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement must, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and must be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to subsection 1. This requirement of submission and approval is in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

ARTICLE VIII - OTHER LAWS APPLICABLE

Nothing in this compact or in any library agreement may be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

ARTICLE IX - APPROPRIATIONS AND AID

1. Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

2. Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

ARTICLE X - COMPACT ADMINISTRATOR

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party must be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

ARTICLE XI - ENTRY INTO FORCE AND WITHDRAWAL

1. This compact enters into force and effect immediately upon its enactment into law by any two states. Thereafter, it enters into force and effect as to any other state upon the enactment thereof by such state.

2. This compact continues in force with respect to a party state and remains binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal may not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

ARTICLE XII - CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes thereof. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and applicability thereof to any government, agency, person, or circumstance is not affected thereby. If this compact is held contrary to the constitution of any state party thereto, the compact must remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History

Source: S.L. 1965, ch. 353, § 1; 1993, ch. 54, § 106.

54-24.1-02. Must comply with state and local laws.

No city, township, or county of this state may be party to a library agreement which provides for the construction or maintenance of a library pursuant to subdivision g of subsection 3 of Article III of the compact, nor pledge its credit in support of such a library, or contribute to the capital financing thereof, except after compliance with any laws applicable to such cities, townships, or counties relating to or governing capital outlays and the pledging of credit.

History

Source: S.L. 1965, ch. 353, § 2.

54-24.1-03. Definition.

As used in the compact, "state library agency", with reference to this state, means the state library.

History

Source: S.L. 1965, ch. 353, § 3; 1979, ch. 550, § 14.

Annotations

Cross-References. State library, see chapter 54-24.

54-24.1-04. Entitled to state aid.

An interstate library district lying partly within this state may claim and be entitled to receive state aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this state. For the purposes of computing and apportioning state aid to an interstate library district, this state will consider that portion of the area which lies within this state as an independent entity for the performance of the aided function or functions and

compute and apportion the aid accordingly. Subject to any applicable laws of this state, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible.

History

Source: S.L. 1965, ch. 353, § 4.

54-24.1-05. Interstate library compact director - Appointment - Deputy.

The governor shall appoint an officer of this state who must be the compact administrator pursuant to Article X of the compact. The governor shall also appoint one or more deputy compact administrators pursuant to said article.

History

Source: S.L. 1965, ch. 353, § 5.

54-24.1-06. Duties of governor in case of withdrawal.

In the event of withdrawal from the compact the governor shall send and receive any notices required by subsection 1 of Article XI of the compact.

History

Source: S.L. 1965, ch. 353, § 6.

CHAPTER 54-24.2
STATE AID TO PUBLIC LIBRARIES

Section

- 54-24.2-01. Eligibility.
- 54-24.2-02. Grant formula.
- 54-24.2-02.1. "Other public funds" defined.
- 54-24.2-03. Incentive for local funding.
- 54-24.2-04. Maintenance of local effort.
- 54-24.2-05. Limitations.
- 54-24.2-06. Use of funds - Reporting.

54-24.2-01. Eligibility.

Public libraries eligible to receive financial aid under this chapter are limited to those public libraries that:

1. Apply to the state library for such financial aid.
2. Are established and operated in accordance with chapter 40-38.
3. Participate in the North Dakota network for knowledge interlibrary loan and information network.

History

Source: S.L. 1979, ch. 551, § 1.

54-24.2-02. Grant formula.

Grants to eligible public libraries must be in accordance with the following formula:

1. One dollar, or a percentage thereof, for each person residing in the city or county operating or providing financial support for the public library, as determined by the latest official federal census; and
2. Five dollars per square mile [259.00 hectares], or a percentage thereof, of land within the geographical boundaries of each county operating or providing financial support for a public library.

History

Source: S.L. 1979, ch. 551, § 2.

54-24.2-02.1. "Other public funds" defined.

"Other public funds", as used in sections 54-24.2-03 and 54-24.2-05, means moneys appropriated for public library services by the governing body of the political subdivision providing public library services under chapter 40-38 in addition to the mill levy made for public library services.

History

Source: S.L. 1981, ch. 418, § 5.

54-24.2-03. Incentive for local funding.

To provide for increased local funding, public libraries eligible to receive funds under section 54-24.2-02 shall have the funds allocated to them modified in accordance with the following formula:

Cities levying

8.00 or more mills	150 percent of allocation
6.00 - 7.99 mills	125 percent of allocation
4.00 - 5.99 mills	100 percent of allocation
3.00 - 3.99 mills	75 percent of allocation
2.00 - 2.99 mills	50 percent of allocation
1.00 - 1.99 mills	33 percent of allocation
0.01 - 0.99 mills	25 percent of allocation
0.00 - mills	0 percent of allocation

Counties levying

4.00 or more mills	150 percent of allocation
3.00 - 3.99 mills	125 percent of allocation
2.00 - 2.99 mills	100 percent of allocation
1.50 - 1.99 mills	75 percent of allocation
1.00 - 1.49 mills	50 percent of allocation
0.50 - 0.99 mills	33 percent of allocation
0.01 - 0.49 mills	25 percent of allocation
0.00 - mills	0 percent of allocation

The computation of mills must be based upon the levy on the taxable valuation and the mill levy equivalent of other public funds received and deposited in the library fund for the operation of the library by the governing body during the preceding fiscal year as certified by the auditor of the city or county operating the library.

History

Source: S.L. 1979, ch. 551, § 3; 1983, ch. 593, § 33.

54-24.2-04. Maintenance of local effort.

1. A public library is not eligible to receive funds under this chapter during a fiscal year if the governing body has diminished, from the average of the three preceding fiscal years, the appropriation, in dollars, derived from the mill levy for public library services under section 40-38-02.

2. If the governing body is levying the maximum number of mills it can levy without having an election to increase the mill levy and the appropriation is diminished below the average of the three preceding fiscal years solely because of a reduction in the taxable valuation, then the public library is eligible to receive funds under this chapter.

History

Source: S.L. 1979, ch. 551, § 4; 1981, ch. 418, § 6.

54-24.2-05. Limitations.

For public libraries operated by cities, funds granted under this chapter may not exceed thirty-three percent of the total expenditure of mill levy moneys and other public funds during the preceding year. For public libraries operated by counties, funds granted under this chapter may not exceed the following percent of the total expenditure of mill levy moneys and other public funds during the preceding year:

less than \$10,000	100 percent
\$10,000 - \$19,999	75 percent
\$20,000 - \$29,999	67 percent
\$30,000 - \$50,000	50 percent
over \$50,000	33 percent

History

Source: S.L. 1979, ch. 551, § 5; 1981, ch. 418, § 7.

54-24.2-06. Use of funds - Reporting.

Funds appropriated under this chapter may be expended by public libraries for the purchase of library materials, supplies and equipment, salaries of library staff, and services. No funds may be used for land acquisition, construction, or investment. Each public library receiving funds under the chapter shall submit to the state library an annual report detailing the expenditures of these funds and all other funds expended by the library within the calendar year. Such report is due within ninety days after the close of the calendar year.

History

[Source.S.L. 1979, ch. 551, § 6; 2005, ch. 492, § 11.]

Annotations

Effective Date. - The 2005 amendment of this section by section 1 of chapter 492, S.L. 2005 became effective August 1, 2005.

CHAPTER 54-24.3 REGIONAL LIBRARY COOPERATIVES

Section

- 54-24.3-01. Definitions.
- 54-24.3-02. Committee - Membership - Compensation.
- 54-24.3-03. North Dakota library coordinating council powers and duties.
- 54-24.3-04. Regional library cooperatives - Establishment.
- 54-24.3-05. Regional library cooperative interim planning committee - Establishment.
- 54-24.3-06. Regional library cooperative interim planning committee - Duties.
- 54-24.3-07. Regional library cooperative - Membership.
- 54-24.3-08. Regional library cooperative - Board.
- 54-24.3-09. Regional library cooperative - Powers and duties.
- 54-24.3-10. Regional library cooperative members - Rights and responsibilities.
- 54-24.3-11. Voting rights of members.
- 54-24.3-12. Withdrawal of membership.
- 54-24.3-13. Regional library cooperatives - Operating grants.
- 54-24.3-14. Fiscal controls and reports.
- 54-24.3-15. Cooperative services and activities.
- 54-24.3-16. Dissolution of the regional library cooperative.

54-24.3-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Academic library" means a library that is part of a college or university that is publicly or privately funded and whose primary role is to provide resources to enrich and support the school's curricula and the research needs of students and faculty.
2. "Library resource center" means a central service unit, whose location is to be agreed upon by members of the regional library cooperative and which is responsible for extending special services to support members of the regional library cooperative, while meeting all cooperative standards.
3. "Multitype library authority" means a geographic subdivision within which multitype libraries are organized for the purpose of providing library and information services through cooperation and mutual support.
4. "Participant library" means any library agreeing to join a regional library cooperative.
5. "Public library" means a library that is supported with funds derived from taxation and which maintains a balanced collection of materials to serve the lifelong information, reading, and recreational needs of the general population.
6. "Regional library cooperative" means an organization of one or more types of library organized under article VI of section 54-24.1-01, or a multitype library authority.
7. "School library media center" means a learning center operated as part of a publicly or privately supported school or school district and whose role is to provide instruction,

cooperatively design learning strategies, and provide resources that support and enrich the curriculum, following the North Dakota school library media guidelines.

8. "Special library" means a public or private sector library whose collection is specialized and limited in scope and size and whose role is to provide information to a limited clientele.

History

Source: S.L. 1991, ch. 596, § 1; 1997, ch. 453, § 4.

Annotations

Effective Date: The 1997 amendment of this section by section 4 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-02. Committee - Membership - Compensation. Repealed by S.L. 1997, ch. 453, § 20.

Annotations

Note: Section 54-24.3-02 was amended by section 26 of chapter 432, S.L. 1997, and repealed by section 20 of chapter 453, S.L. 1997. Pursuant to section 1-02-09, the section is treated as repealed.

54-24.3-03. North Dakota library coordinating council powers and duties.

In the administration of this chapter, the North Dakota library coordinating council may:

1. Adopt rules for the conduct of business.
2. Provide guidance for the development, implementation, and improvement of regional library cooperatives.
3. Enter contracts necessary for establishing and governing regional library cooperatives.
4. Use the staff of the state library in consultation with the state librarian.
5. Adopt a compensation plan for staff as necessary for establishing and governing regional library cooperatives.
6. Set the terms and conditions of statewide service contracts with libraries.
7. Determine necessary or desirable regional or statewide library programs or services.
8. Propose standards for service.
9. Set reimbursement formulas among regional library cooperatives for reciprocal borrowing and other cooperative plans and set statewide policies for reimbursement formulas for reciprocal borrowing.
10. Conduct periodic performance reviews of all categories of coordinating council grant-funded projects and make service revisions.

History

Source: S.L. 1991, ch. 596, § 3; 1997, ch. 453, § 5.

Annotations

Effective Date: The 1997 amendment of this section by section 5 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-04. Regional library cooperatives - Establishment.

The North Dakota library coordinating council may establish regional library cooperatives. In establishing the cooperatives, the council shall consider:

1. Population;
2. Population density;
3. Number and types of libraries;
4. Library information resources, including existing libraries, staff, and collections;
5. Marketing and transportation patterns;
6. Proximity of municipalities;
7. Geographic size of the authority;
8. Finances; and
9. Any other matter not inconsistent with this section.

History

Source: S.L. 1991, ch. 596, § 4; 1997, ch. 453, § 6.

Annotations

Effective Date: The 1997 amendment of this section by section 6 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-05. Regional library cooperative interim planning committee - Establishment.

The North Dakota library coordinating council shall appoint an interim planning committee for a proposed regional library cooperative. The interim planning committee must consist of two lay representatives residing within the cooperative and five librarians. The librarians, as far as practical, must represent public libraries, academic libraries, school library media centers, and special libraries.

History

Source: S.L. 1991, ch. 596, § 5; 1997, ch. 453, § 7.

Annotations

Effective Date: The 1997 amendment of this section by section 7 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-06. Regional library cooperative interim planning committee - Duties.

In the administration of this chapter, the regional library cooperative interim planning committee may:

1. Elect provisional officers;
2. Identify all librarians eligible to be members of the regional library cooperative;
3. Hold informational meetings;
4. Distribute and receive applications for memberships in the regional library cooperative;
5. Draft interim bylaws for the regional library cooperative;
6. Prepare papers of incorporation;
7. Publicize activities;
8. Prepare a three-year plan for the development of services within the cooperative and present it to the North Dakota library coordinating council for review and approval; and
9. Exercise any other duty that is necessary to carry out this chapter.

History

Source: S.L. 1991, ch. 596, § 6; 1997, ch. 453, § 8.

Annotations

Effective Date: The 1997 amendment of this section by section 8 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-07. Regional library cooperative - Membership.

To join the regional library cooperative, a library must obtain official approval from its board and submit an application to the interim planning committee. A library that agrees to provide to any person residing within the cooperative access to its collection on the premises, reciprocal borrowing privileges, and interlibrary loan service, may apply for membership. To be eligible for membership, a library must have defined service objectives, a fixed location, regular hours of service, an organized collection of information and materials accessible for use by its designated clientele, and a qualified and responsible staff. The library must have an identifiable organizational structure and a legal basis for operation. The library must be willing and able to participate in appropriate services and programs as set forth by the regional library cooperative. The regional library cooperative interim planning committee shall review all applications and approve applicants for membership.

History

Source: S.L. 1991, ch. 596, § 7; 1997, ch. 453, § 9.

Annotations

Effective Date: The 1997 amendment of this section by section 9 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-08. Regional library cooperative - Board.

Each participating library shall designate a representative to sit on the board of the regional library cooperative. At its first meeting, the board shall elect a president, vice president, treasurer, and any other officer it determines to be necessary. The director of the designated library resource center shall serve as an ex officio nonvoting member of the board. The board shall meet at least six times a year and has the power to contract, hire staff and set compensation levels, and adopt bylaws for the conduct of its business. The term of office for all officers of the board is one year, commencing on the January first after election.

History

Source: S.L. 1991, ch. 596, § 8; 1997, ch. 453, § 10.

Annotations

Effective Date: The 1997 amendment of this section by section 10 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-09. Regional library cooperative - Powers and duties.

In the administration of this chapter, each regional library cooperative may:

1. Sue and be sued in the name of the cooperative.
2. Designate for the cooperative a central library resource center with responsibility to extend special services to cooperative members while meeting all cooperative standards.
3. Designate an administrative officer for the regional library cooperative.
4. Establish, manage, maintain, and operate library facilities.
5. Employ necessary personnel to carry out this chapter.
6. Purchase supplies and equipment.
7. Acquire and hold property by purchase, devise, lease, gift, or otherwise and sell, exchange, or otherwise dispose of property.
8. Prepare and adopt a budget.
9. Receive and account for funds from cooperative members.
10. Adopt rules.
11. Make an annual report to each member regarding the budget and expenditures, services rendered, program, development plans, audits, and any other information.
12. Enter into contracts necessary to fulfill this chapter.

13. Establish and collect rates and charges for services rendered.

14. Invest excess funds.

15. Establish special funds.

16. Join and participate in civic and professional organizations.

History

Source: S.L. 1991, ch. 596, § 9; 1997, ch. 453, § 11.

Annotations

Effective Date: The 1997 amendment of this section by section 11 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-10. Regional library cooperative members - Rights and responsibilities.

All members of a regional library cooperative are entitled to receive supplementary reference services, delivery service for library materials, interlibrary loan services, and assistance with citation and location of materials, and reciprocal borrowing privileges among the users of member libraries. All members of a regional library cooperative shall share resources with the exception that rare or restricted materials may be exempt, implementing use standards and protocols; avail themselves of continuing education and training opportunities provided by the cooperative; participate in reference, referral, and interlibrary loan services using communication systems for information exchanged among all types of libraries; maintain total expenditures for library operation, excluding capital improvements, at a level not lower than the preceding fiscal year, or maintain the same or higher mill levy or mill rate equivalency as the preceding fiscal year; and participate in cooperative bibliographic projects.

History

Source: S.L. 1991, ch. 596, § 10; 1997, ch. 453, § 12.

Annotations

Effective Date: The 1997 amendment of this section by section 12 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-11. Voting rights of members.

Each academic, institutional, public, school, and special library has one vote on the board of the regional library cooperative. Each operating public school district has one vote on the board of the cooperative and represents all public school media centers located within the district. Private and parochial school media centers located within each public school district are a single entity and shall elect one voting representative from among themselves.

History

Source: S.L. 1991, ch. 596, § 11; 1997, ch. 453, § 13.

Annotations

Effective Date: The 1997 amendment of this section by section 13 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-12. Withdrawal of membership.

To discontinue participation in a regional library cooperative, a library cooperative member shall give, in advance, a one-year written notice to the board of the cooperative and the North Dakota library coordinating council. No member may withdraw unless it has been a participant in the regional library cooperative for at least two years at the time of termination. The withdrawing member shall return all property of the regional library cooperative.

History

Source: S.L. 1991, ch. 596, § 12; 1997, ch. 453, § 14.

Annotations

Effective Date: The 1997 amendment of this section by section 14 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-13. Regional library cooperatives - Operating grants.

Each regional library cooperative, upon formation, may apply to the North Dakota library coordinating council for grant funds available for disbursement by the council.

History

Source: S.L. 1991, ch. 596, § 13; 1997, ch. 453, § 15.

Annotations

Effective Date: The 1997 amendment of this section by section 15 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-14. Fiscal controls and reports.

The board of a regional library cooperative shall develop appropriate accounting and record management policies and procedures documenting the operations of the cooperative. These policies and procedures must provide that:

1. All records for the regional library cooperative and board, including those of the board treasurer, are to be maintained at the cooperative headquarters.
2. Copies of the regional library cooperative board minutes are sent to each member library, the North Dakota library coordinating council, and the state librarian.
3. The fiscal year runs from July first to June thirtieth and financial records and activities are maintained in accordance with accepted accounting practices. A record of all bills, payments, and receipts must be presented to the regional library cooperative board by the treasurer at regular meetings and at any other meeting as required by the board.
4. An annual report of cooperative operations, including an accounting of all revenues and expenses, must be filed with the North Dakota library coordinating council and the state librarian at the close of each fiscal year.

History

Source: S.L. 1991, ch. 596, § 14; 1997, ch. 453, § 16.

Annotations

Effective Date: The 1997 amendment of this section by section 16 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-15. Cooperative services and activities.

1. Each regional library cooperative shall include as part of its five-year plan for development, provisions for:
 - a. Reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the cooperative.
 - b. Interlibrary loan services on behalf of residents of the cooperative.
 - c. Delivery services for library materials.
 - d. Citation and location services for library materials.

2. Each cooperative may provide for:
 - a. Consultant services and shared staff expertise;
 - b. Cooperative or coordinated acquisition of library materials or subject specialization programs;
 - c. Reciprocal borrowing between member librarians;
 - d. Staff development and inservice training programs;
 - e. Centralized ordering, cataloging, and processing of the library materials;
 - f. Cooperative storage of library materials and lost-copy protection programs;
 - g. Access to computerized literature citation and information data bases;
 - h. Preservation of library materials programs;
 - i. Public relations services; and
 - j. Any other services not inconsistent with this section.

History

Source: S.L. 1991, ch. 596, § 15; 1997, ch. 453, § 17.

Annotations

Effective Date: The 1997 amendment of this section by section 17 of chapter 453, S.L. 1997 became effective July 1, 1997.

54-24.3-16. Dissolution of the regional library cooperative.

If the need for a regional library cooperative ceases to exist, the board of the cooperative, by a two-thirds vote of its members, may declare its intent to dissolve the organization and file with the North Dakota library coordinating council a plan for affecting the dissolution. Upon receipt of the dissolution plan, the council shall determine if the area of service can be allocated to other regional library cooperatives, determine whether the assets and liabilities of the regional library cooperative seeking to dissolve can be assumed and absorbed by adjoining regional library cooperatives, and consider any other factors that relate to the operation and functioning of the regional library cooperative seeking to dissolve. If the council determines that the regional library cooperative should be dissolved, the dissolution takes effect when all legal and fiscal obligations of the regional library cooperative have been satisfied.

History

Source: S.L. 1991, ch. 596, § 16; 1997, ch. 453, § 18.

Annotations

Effective Date: The 1997 amendment of this section by section 18 of chapter 453, S.L. 1997 became effective July 1, 1997.

CHAPTER 54-24.4
LIBRARY COORDINATING COUNCIL

Section

54-24.4-01. North Dakota library coordinating council - Members - Term.

54-24.4-02. North Dakota library coordinating council - Compensation and expense reimbursement.

54-24.4-03. North Dakota library coordinating council - Meetings.

54-24.4-04. North Dakota library coordinating council - Powers.

54-24.4-05. North Dakota library coordinating council - Duties.

54-24.4-01. North Dakota library coordinating council - Members - Term.

The North Dakota library coordinating council consists of eleven members. The president of the North Dakota library association is an ex officio voting member of the council. The state librarian is an ex officio nonvoting member of the council. The governor shall appoint nine members to the council, one of whom must represent special libraries, one of whom must represent public higher education institution libraries, one of whom must represent private higher education institution libraries, one of whom must represent school libraries, two of whom must represent public libraries, one of whom must represent disabled, economically disadvantaged, and minority populations, and two citizens at large. All appointed members, except citizens at large, must be practicing librarians. The governor shall take into account reasonable geographic considerations when appointing members of the council. The term of each member is three years. If at any time during a member's term the member ceases to possess the qualifications required by this section, the member's office is deemed vacant and the governor shall appoint a qualified representative to complete the term of office. No member may be appointed to serve more than two consecutive three-year terms.

History

[Source.S.L. 1997, ch. 453, § 19; 2001, ch. 486, § 1; 2005, ch. 493, § 1.]

Annotations

Effective Date. - The 2005 amendment of this section by section 1 of chapter 493, S.L. 2005 became effective August 1, 2005.

The 2001 amendment of this section by section 1 of chapter 486, S.L. 2001 became effective August 1, 2001.

54-24.4-02. North Dakota library coordinating council - Compensation and expense reimbursement.

Each member of the North Dakota library coordinating council is entitled to receive as compensation sixty-two dollars and fifty cents per day, together with expenses as provided in sections 44-08-04 and 54-06-09, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any council member who receives compensation as a regular state official or employee.

History

Source: S.L. 1997, ch. 453, § 19; 1997, ch. 432, § 27.

Annotations

Effective Date: The 1997 amendment of this section by section 27 of chapter 432, S.L. 1997 became effective August 1, 1997.

Note: Section 54-24.4-02 was amended twice by the 1997 Legislative Assembly. Section 19 of chapter 453, S.L. 1997, created the section and the section was amended by section 27 of chapter 432, S.L. 1997. The section is printed above as amended by section 27 of chapter 432, S.L. 1997.

54-24.4-03. North Dakota library coordinating council - Meetings.

The North Dakota library coordinating council shall hold at least one meeting each calendar year for the purpose of awarding grants or contracts. The council shall give notice to the press and the public of any council meeting at least thirty days in advance of the meeting. Awarding of any grant or contract requires approval by two-thirds of the members of the council.

History

Source: S.L. 1997, ch. 453, § 19.

54-24.4-04. North Dakota library coordinating council - Powers.

The North Dakota library coordinating council may elect from its members an executive committee to assist it in performing its duties. The council, in consultation with the state librarian, may request assistance from the staff of the state library in performing its powers and duties.

History

Source: S.L. 1997, ch. 453, § 19.

54-24.4-05. North Dakota library coordinating council - Duties.

The North Dakota library coordinating council shall:

1. Assist in planning, coordinating, and evaluating the services and programs of libraries in the state.
2. Serve as the state advisory council on libraries as required by Public Law No. 101-254.
3. Approve the distribution of grants to libraries, except for grants distributed under chapter 54-24.2.
4. Facilitate the development of a comprehensive statewide online library catalog, promote statewide resource sharing, and encourage electronic networking among all types of libraries.
5. Strengthen the state library in its role of coordinating and enriching library service in the state.
6. Support and strengthen library cooperative ventures, including consortia, regional associations, and partnerships, in their role of extending and improving library services in the state.
7. Promote equitable access to information resources and library services to persons

throughout the state.

8. Promote the services of libraries and librarians.

9. Take action necessary to carry out chapter 54-24.3 and this chapter.

History

[Source.S.L. 1997, ch. 453, § 19; 2005, ch. 493, § 2.]

Annotations

Effective Date. - The 2005 amendment of this section by section 2 of chapter 493, S.L. 2005 became effective August 1, 2005.

CHAPTER 57-15
TAX LEVIES AND LIMITATIONS

57-15-06.7. Additional levies - Exceptions to tax levy limitations in counties.

The tax levy limitations specified in section 57-15-06 do not apply to the following mill levies, which are expressed in mills per dollar of taxable valuation of property in the county:

15. A county levying a tax to establish and maintain a public library service as provided in section 40-38-02 may levy a tax not exceeding four mills.

Source: S.L. 1983, ch. 606, § 55; 1983, ch. 89, § 5; 1983, ch. 610, § 2; 1985, ch. 82, § 137; 1985, ch. 161, § 7; 1985, ch. 614, § 2; 1987, ch. 149, § 3; 1987, ch. 675, § 1; 1987, ch. 676, § 7; 1987, ch. 677, § 5; 1989, ch. 145, § 8; 1989, ch. 579, § 2; 1991, ch. 108, § 6; 1991, ch. 504, § 11; 1995, ch. 61, §§ 12, 14; 1995, ch. 553, § 2; 1997, ch. 58, § 16; 1999, ch. 154, § 2; 1999, ch. 499, § 1; 1999, ch. 501, § 3.

Annotations

Effective Date: The 1999 amendment of this section by section 2 of chapter 154, S.L. 1999 became effective August 1, 1999.

The 1999 amendment of this section by section 1 of chapter 499, S.L. 1999 is effective for taxable years beginning after December 31, 1998, pursuant to section 4 of chapter 499, S.L. 1999.

The 1999 amendment of this section by section 3 of chapter 501, S.L. 1999 became effective August 1, 1999.

Note: Section 57-15-06.7 was amended three times by the 1999 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 2 of chapter 154, S.L. 1999, section 1 of chapter 499, S.L. 1999, and section 3 of chapter 501, S.L. 1999.

57-15-06.10. Optional consolidation of county mill levies.

Statute text

1. In lieu of determining its general fund levy limitation under section 57-15-01.1 or 57-15-06, a county may determine its general fund levy authority as provided in this section. A county may consolidate the levies provided for under sections 4-02-26, 4-02-27, 4-02-27.1, 4-02-27.2, 4-02-37, 4-08-15, 4-08-15.1, 4-16-02, 4-33-11, 11-11-24, 11-11-53, 11-11-60, 11-11-65, 11-11.1-06, 11-28-06, 18-07-01, 24-05-01, 32-12.1-08, 40-38-02, 40-57.2-04, 49-17.2-21, 52-09-08, 57-15-06.4, 57-15-06.5, 57-15-06.6, 57-15-06.9, 57-15-10.1, 57-15-27.2, 57-15-54, 57-15-59, 57-47-04, 61-04.1-26, and 63-01.1-06 with its general fund levy under section 57-15-06 to provide for a county general fund levy which may not exceed one hundred thirty-four mills on the dollar of taxable valuation of the county. A county that elects to determine its general fund levy authority under this section may not impose separate levies under the sections listed in this subsection and may not increase the number of mills levied in any one year over the number levied in the previous year by more than the increase in the consumer price index for all urban consumers, all items, United States city average, as completed by the United States department of labor, bureau of labor statistics.

2. The consolidation of mill levies under subsection 1 may be accomplished by resolution of the board of county commissioners, subject to the right of referendum by the county electors. The board of county commissioners may by majority vote adopt a preliminary resolution providing for the consolidated levy. The board shall publish the preliminary resolution in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately following the adoption of the preliminary resolution. The board of county commissioners shall hold at least one public hearing and receive comments regarding the consolidation of mill levies. The preliminary resolution may be referred to the qualified electors of the county by a petition protesting the consolidation. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor before four p.m. on the ninetieth day after the preliminary resolution is adopted. If the petition contains the signatures of a sufficient number of qualified electors, the board of county commissioners shall rescind the preliminary resolution or submit the resolution to a vote of the qualified electors of the county at the next regular election or at a special election called by the board of county commissioners to address the question. If a majority of the qualified electors voting on the question approve the resolution, the consolidation becomes effective for the next tax year and subsequent tax years. If a petition protesting the consolidation is not submitted within ninety days, the board of county commissioners shall consider the comments received regarding the consolidation and either adopt a final resolution implementing the consolidation or rescind the preliminary resolution. The consolidation of mill levies may be reversed by resolution of the board of county commissioners following the same procedure provided for implementation of the consolidation or by a majority vote of the qualified electors of the county voting on the question pursuant to submission of a petition to reverse the consolidation signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election.

3. A contractual obligation entered by a county with respect to a dedicated mill levy may not be impaired as a result of consolidation of levies under this section.

History

Source: S.L. 2003, ch. 516, § 1.

Annotations

Effective Date: This section became effective January 1, 2003.

57-15-10. Exceptions to tax levy limitations in cities.

The tax levy limitations specified in section 57-15-08 do not apply to the following tax levies:

5. Taxes, not exceeding four mills, levied for the purpose of establishing and maintaining a library fund for public library services in accordance with section 40-38-02.

History

Source: S.L. 1929, ch. 235, § 5; 1931, ch. 297, § 1; R.C. 1943, § 57-1510; S.L. 1957, ch. 352, § 4; 1957 Supp., § 57-1510; S.L. 1963, ch. 383, § 1; 1967, ch. 323, § 244; 1981, ch. 419, § 10; 1983, ch. 593, § 48; 1983, ch. 606, § 73; 1983, ch. 611, § 2; 1985, ch. 82,

§§ 139, 162; 1985, ch. 604, § 22; 1985, ch. 616, § 1; 1987, ch. 149, § 4; 1987, ch. 677, § 6; 1989, ch. 697, § 1; 1999, ch. 50, § 73; 1999, ch. 211, § 18; 1999, ch. 499, § 2.

Annotations

Effective Date: The 1999 amendment of this section by section 73 of chapter 50, S.L. 1999 became effective August 1, 1999.

The 1999 amendment of this section by section 18 of chapter 211, S.L. 1999 became effective August 1, 1999.

The 1999 amendment of this section by section 2 of chapter 499, S.L. 1999 is effective for taxable years beginning after December 31, 1998, pursuant to section 4 of chapter 499, S.L. 1999.

Note: Section 57-15-10 was amended three times by the 1999 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 73 of chapter 50, S.L. 1999, section 18 of chapter 211, S.L. 1999, and section 2 of chapter 499, S.L. 1999.

Cross-References. Exemption of levies to pay bonds issued for purchase of special assessment warrants, see § 40-27-05.

Payment and compromise of judgments against cities, see ch. 40-43.

CHAPTER 99-01.3-01
ORGANIZATION LICENSES AND PERMITS

Section

- 99-01.3-01-01. Ineligible organizations
- 99-01.3-01-02. Site authorization
- 99-01.3-01-03. License
- 99-01.3-01-04. Reporting a change in information
- 99-01.3-01-05. Permits
- 99-01.3-01-01. Ineligible organizations

Statute text

An organization or a closely related organization is ineligible for a license or permit if either organization has failed to resolve an imbalance involving its gaming or trust account according to section 99-01.3-03-05, either organization has deals or games with state gaming stamps that are not accounted for, it is delinquent in paying any tax, interest, penalty, or monetary fine due, or either organization was convicted of violating this article or North Dakota Century Code chapter 12.1-28 or 53-06.1. An auxiliary that is not a closely related organization is eligible for a permit. An organization that is first licensed or first issued a permit on or after July 1, 2002, must have its principal executive office in North Dakota. Except for an educational organization, a county, city, state, political subdivision, or federal entity is not eligible for a license or permit. A nonprofit social, hobby, trade, business, professional, similar club or association, or organization whose primary purpose mainly provides a direct benefit to its officers, is not a public-spirited organization eligible for a license.

History

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

General authority

General Authority: NDCC 53-06.1-01.1

Law implemented

Law Implemented: NDCC 53-06.1-01, 53-06.1-01.1

CHAPTER 12.1-27.1 OBSCENITY CONTROL

Section

- 12.1-27.1-01. Obscenity - Definitions - Dissemination - Classification of offenses.
- 12.1-27.1-02. Promoting obscenity to minors - Definitions.
- 12.1-27.1-03. Promoting obscenity to minors - Minor performing in obscene performance - Classification of offenses.
- 12.1-27.1-03.1. Objectionable materials or performance - Display to minors - Definitions - Penalty.
- 12.1-27.1-03.2. Exhibition of X-rated motion picture in unscreened outdoor theater - Penalty.
- 12.1-27.1-04. Definitions.
- 12.1-27.1-05. Civil proceeding a prerequisite to criminal liability.
- 12.1-27.1-06. Commencement of civil proceeding - Intervention - Seizure of materials.
- 12.1-27.1-07. Procedures - Expanded district court - Appeal.
- 12.1-27.1-08. Judgment - Effect - Notice to constructive defendants - Use in criminal prosecutions.
- 12.1-27.1-09. Preliminary injunction - Limitations.
- 12.1-27.1-10. Conflicting decisions - Resolution.
- 12.1-27.1-11. Exceptions to criminal liability.
- 12.1-27.1-12. State preemption of local laws regulating obscenity.

12.1-27.1-01. Obscenity - Definitions - Dissemination - Classification of offenses.

Statute text

1. A person is guilty of a class C felony if, knowing of its character, the person disseminates obscene material or if the person produces, transports, or sends obscene material with intent that it be disseminated.

2. A person is guilty of a class C felony if the person presents or directs an obscene performance for pecuniary gain or participates in any portion of a performance which contributes to the obscenity of the performance as a whole.

3. A person is guilty of a class C felony if the person, as owner or manager of an establishment licensed under section 5-02-01, permits an obscene performance in the establishment. A person is guilty of a class C felony if that person participates, whether or not for compensation, in an obscene performance in an establishment licensed under section 5-02-01.

4. a. In addition to the penalty provided in subsection 1, 2, or 3, any person who violates subsection 1, 2, or 3 in the course of a commercial or for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:
 - (1) For an individual, a fine not to exceed ten thousand dollars; or
 - (2) For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.

b. In addition to the penalty provided in subsection 1, 2, or 3, the court shall impose the following penalty upon the conviction of a person or entity described in subdivision a for a second or subsequent offense under subsection 1, 2, or 3:

(1) For an individual, a fine not to exceed fifty thousand dollars; or

(2) For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.

5. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:

a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;

b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and

c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

6. As used in this chapter, "disseminate" means to sell, lease, rent, advertise, broadcast, transmit, exhibit, or distribute for pecuniary gain. "Disseminate" includes any transmission of visual material shown on a cable television system, whether or not accompanied by a soundtrack, and any sound recording played on a cable television system.

7. As used in this chapter, the term "material" means any physical object, including, but not limited to, any type of book, sound recording, film, or picture used as a means of presenting or communicating information, knowledge, sensation, image, or emotion to or through a human being's receptive senses.

8. As used in this chapter, the term "patently offensive" means so offensive on its face as to affront the contemporary North Dakota standards of decency.

9. As used in this chapter, the term "performance" means any play, dance, or other exhibition presented before an audience.

10. As used in this chapter, the term "prurient interest" means a voyeuristic, lascivious, degrading, shameful, or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.

11. As used in this chapter, the term "sexual conduct" means actual or simulated:

a. Sexual intercourse;

b. Sodomy;

c. Sexual bestiality;

d. Masturbation;

- e. Sadomasochistic abuse;
- f. Excretion; or
- g. Lewd exhibition of the male or female genitals.

As used in this subsection, the term "sodomy" means contact between the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus. As used in this subsection, the term "sadomasochistic abuse" means a depiction or description of flagellation or torture by or upon a person who is nude or clad in undergarments or in a bizarre or revealing costume; or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

12. As used in this chapter, the term "book" means any book, magazine, pamphlet, newspaper, or other article made out of paper and containing printed, typewritten, or handwritten words.

History

Source: S.L. 1975, ch. 119, § 1; 1985; ch. 181, § 1; 1985, ch. 182, § 1; 1989, ch. 169, § 1; 1991, ch. 128, § 1; 1993, ch. 54, § 106.

Annotations

Note: The subsection added by section 1 of chapter 128, S.L. 1991, has been numbered as subsection 4 and the remaining subsections have been renumbered.

Local Regulation Not Preempted.

City had authority to enact ordinance that prohibited liquor licensees from allowing sexually explicit or obscene entertainment on licensed premises; this chapter, as amended by S.L. 1979, ch. 184, did not preempt such ordinance. *Olson v. City of W. Fargo*, 305 N.W.2d 821 (N.D. 1981).

Preemption of Local Regulation.

Provisions of subsection 3, which specifically apply to establishments licensed to sell alcoholic beverages under the provisions of section 5-02-01 et seq., preempt that field of regulation, and, notwithstanding the provisions of section 5-02-09, local governments do not have the power to enact obscenity ordinances relating to such establishments. *City of Grafton v. Four G's, Inc.*, 252 N.W.2d 879 (N.D. 1977), decided prior to the amendment to § 12.1-27.1-12 by Session Laws 1979, ch. 184.

DECISIONS UNDER PRIOR LAW.

Constitutionality.

Former section on buying, selling, etc., obscene materials was unconstitutional as it failed to require scienter and was overly broad and so ambiguous that it failed to provide adequate, fair notice of criminal conduct regulated; words such as "salacious", "lascivious", "obscene", "lewd", and "indecent" were so void of common meaning when applied to a particular act that a person would have no way of determining whether his conduct or material violated the statute. *McCright v. Olson*, 367 F. Supp. 937 (D.N.D. 1973).

Act Openly Outraging Public.

Requirement that acts prosecuted under indecent exposure law had to "openly outrage public decency" was a part of the statutory definition, and the act must have been done openly, and not to the exclusion of public observation, to constitute the crime. *State v. Stevens*, 33 N.D. 540, 157 N.W. 668 (1916).

Applicability.

Indecent exposure law applied only where no other punishment was provided in the statute for the act complained of. *State v. Nelson*, 36 N.D. 564, 163 N.W. 278 (1917).

Collateral References.

Obscenity <key> 1 et seq.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity, § 3 et seq.

67 C.J.S. Obscenity, § 1 et seq.

Entrapment to commit offense against obscenity laws, 77 A.L.R.2d 792.

Modern concept of obscenity, 5 A.L.R.3d 1158.

Validity of procedures designed to protect the public against obscenity, 5 A.L.R.3d 1214.

Nude-model photograph studio, operation as offense, 48 A.L.R.3d 1313.

Topless or bottomless dancing or similar conduct as offense, 49 A.L.R.3d 1084.

Motion pictures, exhibition as nuisance, 50 A.L.R.3d 969.

Massage salons and health clubs: validity and construction of statute or ordinances forbidding treatment in health clubs or massage salons by persons of the opposite sex, 51 A.L.R.3d 936.

Pornoshops or similar places disseminating obscene materials as nuisance, 58 A.L.R.3d 1134.

Validity, construction, and effect of statutes or ordinances prohibiting the sale of obscene materials to minors, 93 A.L.R.3d 297.

Validity, construction, and application of statutes or ordinances regulating sexual performance by child, 21 A.L.R.4th 239, 42 A.L.R.5th 291.

Validity and application of statute exempting nonmanagerial, nonfinancially interested employees from obscenity prosecution, 35 A.L.R.4th 1237.

Admissibility of evidence of public-opinion polls or surveys in obscenity prosecutions on issue whether materials in question are obscene, 59 A.L.R.5th 749.

Regulation of exposure of female, but not male, breasts, 67 A.L.R.5th 431.

Nudity as constituting nuisance, 92 A.L.R.5th 593.

Constitutionality of state statutes banning distribution of sexual devices, 94 A.L.R.5th 497.

What constitutes "public place" within meaning of state statute or local ordinance prohibiting indecency or commission of sexual act in public place, 95 A.L.R.5th 229.

12.1-27.1-02. Promoting obscenity to minors - Definitions.

Statute text

As used in this section and in section 12.1-27.1-03:

1. "Promote" means to produce, direct, manufacture, issue, sell, lend, mail, publish, distribute, exhibit, or advertise.
2. "Harmful to minors" means that quality of any description or representation, in whatever form of sexual conduct or sexual excitement, when such description or representation:
 - a. Considered as a whole, appeals to the prurient sexual interest of minors;
 - b. Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and

c. Considered as a whole, lacks serious literary, artistic, political, or scientific value for minors.

3. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

History

Source: S.L. 1975, ch. 119, § 2; 1979, ch. 183, § 2.

12.1-27.1-03. Promoting obscenity to minors - Minor performing in obscene performance - Classification of offenses.

Statute text

1. It is a class C felony for a person, knowing of its character, to recklessly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.

2. It is a class C felony to permit a minor to participate in a performance which is harmful to minors.

History

Source: S.L. 1975, ch. 119, § 3; 1989, ch. 169, § 2.

12.1-27.1-03.1. Objectionable materials or performance - Display to minors - Definitions - Penalty.

Statute text

1. A person is guilty of a class B misdemeanor if he willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.

2. As used in this section:

a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.

b. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.

c. The above shall not be construed to include a bona fide school, college, university, museum, public library, or art gallery.

History

Source: S.L. 1977, ch. 126, § 1.

Annotations

Collateral References.

Constitutionality of state statutes banning distribution of sexual devices, 94 A.L.R.5th 497.

12.1-27.1-03.2. Exhibition of X-rated motion picture in unscreened outdoor theater - Penalty.

Statute text

Any person who, knowing of its character, exhibits any motion picture rated X by the motion picture association of America in any outdoor theater where the screen is visible beyond the limits of the theater audience area, so that the motion picture may be seen and its content or character distinguished by normal unaided vision by a minor viewing it from beyond the limits of the theater audience area, is guilty of a class B misdemeanor.

History

Source: S.L. 1979, ch. 183, § 1.

12.1-27.1-04. Definitions. Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-05. Civil proceeding a prerequisite to criminal liability. Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-06. Commencement of civil proceeding - Intervention - Seizure of materials. Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-07. Procedures - Expanded district court - Appeal. Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-08. Judgment - Effect - Notice to constructive defendants - Use in criminal prosecutions. Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-09. Preliminary injunction - Limitations. Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-10. Conflicting decisions - Resolution. Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-11. Exceptions to criminal liability.

Statute text

Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of material in the course of law enforcement, judicial, or legislative activities; or to the possession of material by a bona fide school, college, university, museum, or public library for limited access for educational research purposes carried on at such an institution by adults only. Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it.

History

Source: S.L. 1975, ch. 119, § 11.

Annotations

Collateral References.

Obscenity prosecutions: statutory exemption based on dissemination to persons or entities having scientific, educational, or similar justification for possession of such materials,, 13 A.L.R.5th 567.

12.1-27.1-12. State preemption of local laws regulating obscenity.

Statute text

This chapter shall be applicable and uniform throughout the state, and no political subdivision shall enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of obscene materials, or controlling obscene performances, except ordinances authorized by section 5-02-09, section 58-03-11, chapter 11-33, or chapter 40-47.

History

Source: S.L. 1975, ch. 119, § 12; 1979, ch. 184, § 1; 1981, ch. 158, § 1.

Annotations

Local Ordinances Authorized.

City had authority to enact ordinance that prohibited liquor licensees from allowing sexually explicit or obscene entertainment on the licensed premises; this chapter did not preempt such ordinance. *Olson v. City of W. Fargo*, 305 N.W.2d 821 (N.D. 1981).

CHAPTER 12.1-31
MISCELLANEOUS OFFENSES

12.1-31-08. Possession or distribution of certain photographs or other visual representations prohibited - Penalty.

Statute text

A person is guilty of a class A misdemeanor if, knowing of its character and content, a person surreptitiously acquires and knowingly possesses or distributes any photograph or other visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, without the individual's written consent. If the photograph or other visual representation is of a minor and possession does not violate section 12.1-27.2-04.1, a parent of the minor may give permission for a person to possess or distribute the photograph or other visual representation. This section does not apply to any book, as defined in section 12.1-27.1-03.1, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by a licensed attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that person's scope of employment.

History

Source: S.L. 1993, ch. 127, § 1.

N.D.A.G. Letter to Thompson (Dec. 2, 1985)

December 2, 1985

Mr. Maury C. Thompson
Sioux County State's Attorney
Sioux County Courthouse
Fort Yates, ND 58538

Dear Mr. Thompson:

Thank you for your letter of November 15, 1985, concerning two members of a school board who are employees of that school district.

In *Tarpo v. Bowman Public School District No. 1*, 232 N.W.2d 67 (N.D. 1975), our North Dakota Supreme Court adopted the common law rule as to incompatible offices. The Court concluded that two offices or positions are incompatible where one office has the power of appointment to the other or the power to remove the other. Furthermore, incompatibility exists where there are many potential conflicts of interest between the two such as salary negotiations, supervision, and control of duties and obligations to the public to exercise independent judgment. The specific instance in *Tarpo, supra*, involved a teacher who was also a member of the school board. The Court concluded that the facts justified the conclusion that such an arrangement involved incompatible offices.

We believe that the rationale in *Tarpo, supra*, is directly applicable to your factual situation. Although a teacher is involved in *Tarpo*, the same rule of law as to determining whether two offices are incompatible is relevant and should be consulted with respect to the two positions described in your letter. Thus, if one finds that these offices or positions are incompatible given the standard as provided us by the Supreme Court in *Tarpo, supra*, then the individual could not hold both offices and would have to choose which office he would continue to hold.

Sincerely,

Nicholas J. Spaeth

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Hulen E. Bivins
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