



Managing Liability as a Board Member

IC 27-1-29; IC34-4-11.5; IC 34-4-16.5

This is unquestionably an age of litigation. We are quick to take each other to court for the smallest of reasons. When you take on the very public responsibility of governing the library, you naturally get the liability of that task as part of the baggage. The season is always open on public figures.

“It’s good business to assess the risk and understand the extent of your liability.”

The liability risk is not an overwhelming factor in service to this board. It is relatively rare that a nonprofit board member is successfully sued for actions as a board member. But it's just good business to assess the risk and understand the extent of your liability.

Legal requirements for the library board, such as compliance with the Indiana "Open Door" law and conflict of interests, is covered in more detail in other sections of this manual. But there are a few general rules that every board member should understand to reduce risk for yourself and the library...

1) Pay attention. Your greatest liability risk comes from negligence in doing the job as it is supposed to be done. When you miss meetings, vote on issues without adequate preparation or study, fail to carefully evaluate the financial status of the library or just don't take the time to do the job right, you are walking on dangerous ground.

Your primary task as a board member is to pay attention and keep things running right. By taking your seat at the board table, you accept that responsibility. If you then fail to actually take due care in governance of the library for the community, you are negligent and liable for that negligence.

Pay attention to financial reports and the annual audit. Read the minutes of the meetings for accuracy. Have adequate and correct information and understand the issues before making decisions. Evaluate the director and the progress of the library annually.

2) Know your board policies well and follow them. Failure to have a policy when you should have one or failure to abide by the policies you have approved is often a source of litigation.

3) Use common sense in taking action as a board member. No one has to tell you that some issues such as potential employment discrimination or manipulating funds are dangerous and will very possibly land you in court.

4) Seek legal counsel when a question of legality arises. Board members often approve major contracts for the library. It should be standard procedure to have contracts reviewed by an attorney before the board gives approval.

5) Check your board's Directors and Officers (Errors and Omissions) insurance policy to know what it covers and what it does not cover. Most homeowner's liability policies do not cover your liability as a board member, so your board should consider additional coverage for the board through the library's insurance package. See the *Accounting and Uniform Compliance Guidelines Manual for Libraries* for limitations on general liability insurance.

6) Take preventative measures. Request that your library legal counsel discuss liability risks with the full board. Many insurance companies also provide risk management programs for organizations like the library. Ask your insurance carrier to provide such a program for your board.

7) Do only what the law says your board can do. The general rule for staying legal for most organizations is that if the law does not prohibit something then it is permitted. However, under Indiana law, library boards may not do anything but what is spelled out in the Indiana library law. Libraries in Indiana do not have "home rule".

8) Ask your library director to explain how your library assures compliance with the following:

- intellectual freedom
- Family Medical Leave Act
- affirmative action
- equal employment laws
- Americans with Disabilities Act
- drug-free workplace
- federal privacy laws
- copyright laws
- sexual harassment policy

Noncompliance with those laws could result in legal action against the board.

