

Onarga Community Library District

RE: Discussion of removal of library trustees from office and destruction of public records.

I. SOLUTION?

In my opinion, the solutions to this issue are:

- Acknowledgement that the Onarga Community Library District is a library district and is governed by the Public Library District Act of 1991.
- Acknowledgement that the Onarga Community Library District is not governed by the Local Library Act and nothing in the Local Library Act applies to the Onarga Community Library District.
- Acknowledgement that the Onarga Community Library District improperly "removed" Trustee Hubner in violation of the Public Library District Act
- Acknowledgement that public records (open meeting recordings) were destroyed that should have been kept and made available to the public under the FOIA.
- Have the Onarga Community Library District issue a written apology to former Trustee Hubner for improperly removing her from office.
- Have the Onarga Community Library District issue a written apology to the public for improperly destroying the open public meeting recordings.

Below you will find these issued laid out in detail.

I appreciate your responses and hope this will close the issue.

II. ISSUE: Audio Recordings of open public meetings of the Onarga Community Library District

I sent two separate FOIA requests concerning audio recordings of the OCLD meetings. The first response was that:

"We do not have the information that you are requesting. Our Board Secretary does tape the meeting and disposes the tape each month once she reviews it and types the minutes."

Knowing that recordings of open public meetings are public records, I then asked for any Records Destruction Certificates from the Downstate Records Commission authorizing the destruction of meeting recordings. The OPLD's answer was:

"As stated before we do not retain the tape from board meetings, they are disposed of after the Secretary types the minutes from each meeting, therefore there is no records destruction certificates"

Knowing that any destruction of public records requires a Records Destruction Certificate from the Downstate Records Commission (according to the Local records Act, 50 ILCS 205), I sent a demand to immediately cease destruction of these meeting recordings:

"This is a formal demand to immediately cease destruction of public records, including but not limited to public meeting recordings, unless and until the Onarga Public Library District obtains records destruction certificates from the Downstate Records Commission as required by law.

The Local Records Act, 50 ILCS 205, describes how to obtain a records destruction certificate and public records cannot be destroyed without a certificate.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=699&ChapterID=11>

The Secretary of State's website provides information on the records destruction certificate.

https://www.cyberdriveillinois.com/departments/archives/records_management/lrmdisp.html

The Secretary of State also provides an informative guide on destruction of local records.

https://www.cyberdriveillinois.com/publications/pdf_publications/lr34.pdf

The Secretary of State provides a FAQ on local records:

https://www.cyberdriveillinois.com/departments/archives/records_management/faqlocal.html

I am writing this because the Onarga Library has informed me, on two separate occasions, that they record (audio or

video), and then destroy the recording of, their public library board meetings.

Recordings of public meetings are public records as defined in the Local Records Act and in the Freedom of Information Act."

Your (OCLD) response to my demand was (emphasis mine):

"Further to your correspondence, while I have no objection to advising the Board to keep its recordings, I would point you to the Illinois Open Meetings Act which requires that written minutes of public meetings be kept. The Act requires recorded or verbatim minutes in the case of closed or executive sessions. It does NOT require verbatim or recorded public meetings. Accordingly, the recordings in this instance are purely for purposes of transcription and do not constitute "records" for the purpose of the statute that you cite. That said, I would recommend that the board keep the recordings in order to appease Mrs. Hubner."

I then responded asking you to read an AG Binding Opinion stating that meeting recordings are public records and subject to the Freedom of Information Act:

*"Please read [Binding AG Opinion 17-012](#), I think you will change your mind.
This has nothing to do with Mrs. Hubner, it has to do with compliance with the FOIA law."*

This morning you replied that:

"Thank you for this Attorney General opinion and that is the basis for my advice going forward for the board to preserve any recordings that are made. However, if not recording is made and just minutes are taken, this does not apply and the board does not always record its open meeting minutes."

It matters not that the Open Meetings Act does not require the recording of an open public meeting. What matters is that the recordings were made, and once made, they are public records of the library district.

I am hoping that you will read that opinion and agree that when recordings are made of open public meetings, those recordings are public records and subject to the FOIA.

III. ISSUE: The Onarga Community Library District is a "Public Library District" that is governed by the Public Library District Act of 1991.

As with any other unit of local government, there are statutes specifically for the governance of that unit of local government. This information can also be found in the [Legislator's Guide to Local Governments in Illinois: Special Districts](#). For example:

- Water Districts are governed by the Public Water District Act (page 110)
- Park District are governed by the Park District Code (page 68)
- Airport Authorities are governed by the Airport Authorities Act (page 1)
- Library Districts are governed by the Public Library District Act of 1991 (page 47)

The Onarga Community Library District is governed by the Public Library District Act, you cannot apply the library trustee removal methods found in the Illinois Local Library Act to a Library District. They are two distinct forms of local government, with two separate governing statutes.

Each type of government serves its purpose, and each type of government has its own statute governing its operations. You cannot intermingle the authorizations, powers, taxing authorities, or prohibitions found among the various statutes to fit the end result you are looking for.

Dillon's Rule applies to local governments in Illinois, and as such, the general rule is that a local government possesses only those powers expressly granted it by the Legislature thru the Constitution and Statutes (applicable to it) passed and signed into law, and those necessarily implied powers essential to the accomplishment of a power expressly granted. The implied power must not simply be convenient, but indispensable to the expressly granted powers.

This rule also applies when a statute is silent. "*When a statute is silent, that is the prohibition*" - in other words, silence is not a "granting of power" and is therefore a prohibition on the action contemplated. The requirement of an express granting of power also means when a power is not granted (or is silent), it does not exist.

IV. ISSUE: Removal of Library District Trustee appointed to fill the vacancy of an elective office

The Onarga Community Library District is a "Public Library District" and is governed by the [Public Library District Act of 1991, 75 ILCS 16](#).

The OCLD, thru its attorney has acknowledged several times that the statute is silent when it comes to "removing" a board member from the governing body of its Library District. I agree, and that silence is a prohibition of board member removal UNLESS the OCLD can apply one of the five reasons found in Article 30 of the Public Library District Act as grounds for declaring a vacancy in the Office of Trustee of the Library District.

Section 30-25. Vacancies., of the Public Library District Act expressly grants the power of a Library District Board of Trustees (this power was not granted to the chairman of the board) to declare vacancies in the Office of Trustee when an elected or appointed trustee:

- Declines, fails, or is unable to serve,
- Becomes a nonresident of the district,
- Is convicted of a misdemeanor by failing, neglecting, or refusing to discharge any duty imposed upon him or her by this Act, or,
- Has failed to pay the library taxes levied by the district.

Additionally, the Legislature granted an additional express power for declaring a vacancy:

- Absence without cause from all regular board meetings for a period of one year shall be a basis for declaring a vacancy.

Those are the only powers, expressly granted by the legislature, for "removing" - thru declaring a vacancy - a Library District

Trustee, whether they be elected, or appointed to fill a vacant elected trustee position.

Once a person is appointed to the elective position of trustee, they are in the Office of Trustee until the next regular library election (with an exception listed in the Act). They have the same powers, duties, responsibilities, and consequences as the elected trustee would have had, and they are subject to the same "removal" process (thru declaration of a vacancy) as the elected trustee would have had.

No other power exists to "remove" a library district trustee short of a court order. Even a finding of guilty under 75 ILCS 16/30-52 does not remove a trustee.

V. ISSUE: Answers to previous questions

First round of questions:

1. Is the Onarga Library a "Public Library District"?
2. If so, isn't it required to operate under the Public Library District Act of 1991, 75 ILCS 16)?
3. Doesn't Section 30-25 of the Act state, in subparagraph (a), the conditions on which a vacancy may be declared in the office of Library Trustee?
4. Was Trustee Hubner removed from office because she declined, failed, or was unable to serve?
5. Was Trustee Hubner removed from office because she was convicted of a misdemeanor by failing, neglecting, or refusing to discharge any duty imposed upon her by the Act?
6. Was Trustee Hubner removed from office because she had failed to pay the library taxes levied by the district?
7. Was Trustee Hubner removed from office because she was absent at every board meeting for a period of one year?
8. Why did the Chairman, during the October 2018 meeting say "*with the power granted by the State of Illinois I remove you, Doris, from the Library Board*"?
9. What power does the Chairman have to remove any trustee from the library board?
10. Which statute grants him that power?
11. According to the May 2017 meeting minutes, Jennifer Cook and Doris Hubner were appointed to the library board. Is this true?
12. According to the June 13, 2017 meeting minutes, Laura Dufraim, Jennifer Cook, and Doris Hubner were all sworn in. Is this true?

13. According to the Nov 2017 meeting minutes, "a written ballot" was taken to remove the Treasurer from her position. What statute grants the power for a written ballot? Were the votes, and who voted to remove her read out loud? (See *WSRD, Inc. v. Ogle County*, 2nd App Dist. 1981) (See also Illinois Attorney General Public Access Binding Opinion 13-006)

First round of your answers:

- a. The first point I would make is that there are different procedures that apply in the case of a board member who, like Mrs. Hubner, was appointed as opposed to elected.
- b. Second, the statute you cite pertains to vacancies and how they are created or occur by operation of law. That statutory section does not pertain to removals. In fact the statute is intentionally silent on that matter.
- c. The only part of the Library Act that applies to removal of a trustee is Section 4-1.1, which is entitled "Term of Office, Removal", and provides that, in a city, the mayor (or president where applicable) may remove a board member in the manner provided under Section 3.1-35-10 of the Illinois Municipal Code, which sets forth conditions for removal of a board member. That Section specifically provides that a board member can be removed upon any written charge when the mayor (or president where applicable) is of the opinion that doing so would be in the interests of the constituents. The library board president and members believed that such action was necessary because of certain conduct displayed.
- d. There is a very good analysis of the issue in the Second Appellate District's decision in *Jaros v Village of Downers Grove*, which upheld the removal of a library board member by the Mayor of that village.
- e. Finally, you inquire as to the removal of Mrs. Hubner from the position of Treasurer in Nov. 2017. This was done at a public meeting by open, verbal vote which was reflected in the minutes of the meeting.

First round of my responses:

- A. The Onarga Community Library District is a "Library District" and as such, the governing statute is the "Public Library District Act of 1991, 75 ILCS 16."
- B. The statute you quoted in your response was the "Local Library Act" and is not applicable to the Onarga Library.

- C. A person who is appointed to an elected position has the same rights, duties, and responsibilities as the elected person would have had. In the case of the Onarga Library, Hubner was appointed to an elected position and can only be removed in the manner in which the Public Library District Act prescribes removal or declaration of vacancy.
- D. Jaros v Village of Downers Grove does not apply to a Library District, it only applies to a municipal library that falls under the Local Library Act, not a library district that falls under the Public Library District Act. To try and compare a Local Library with a Library District it like comparing apples and oranges.
- E. I have a copy of the Nov 2017 meeting minutes, and they clearly state "written ballot" on the question to remove Hubner as Treasurer. See attached minutes.

YOUR SECOND ANSWER:

The provisions you quote do not apply in the instant case because those provisions do not relate to removal of a board member. They only relate to the creation of a vacancy by operation of law. The statute is silent on removal.

MY RESPONSE:

Silence is a prohibition, not an excuse to go to a completely unrelated statute to find the express permission for a different type of public body.

Removal of a board member is described in the Public Library District Act as "declaring a vacancy" and it also gives the conditions upon which a library district board may declare a vacancy.

YOUR SECOND ANSWER:

You conclude that Jaros does not apply but the fact that it relates to a municipality does not limit its application. The issue in the case was the removal of the board member

MY RESPONSE:

It absolutely does not apply. The Jaros case dealt specifically with a municipal library (not a Library District) and dealt with the powers granted under the Local Library Act, not the powers granted under the Public Library District Act. Janus does not apply to the removal of Library District Trustee Hubner.

YOUR SECOND ANSWER:

Appointed board members do differ from elected members when it comes to removal. For instance, courts have held that appointed officials can be removed at the pleasure of the entity that appointed them.

MY RESPONSE:

With this library district, we are talking about a person appointed to an elective position, not someone appointed by the mayor to an appointive position (there is a difference). There have been no court cases holding that a person appointed to an elective position can be removed at the pleasure of anyone.