



TOWN OF SALEM
Kenosha County



June 22, 2015

Howard Skinner
Village President
108 E. Main Street
Twin Lakes, Wisconsin 53181

Dear Community Library Board Member,

As you all are aware, the Kenosha Area Library System and the Department of Public Instruction has recently expressed their concern about the membership ratio of the Community Library Board. Both of these parties believe that the current membership of Community Library Board is not in keeping with the State of Wisconsin Statutes. With this in mind, I have requested that the Town of Salem's Attorney and Administrator research and suggest possible alternatives to the current membership of the Community Library Board.

Before considering changes to the Community Library Board membership, I would like to stress that I believe that the Community Library Board has done very well with the current structure and I hesitate to alter the membership ratio that is currently in place. I have attached the legal opinion provided by the Town of Salem's Attorney. This opinion offers a number of scenarios ranging from strict compliance to the statute, to the dissolution of the Community Library. While the opinion offers many different solutions I would like to recommend that the Municipalities of the Community Library consider option number two.

Option number two proposes an agreement that would revise the community library agreement to comply with current state statute, and at the same time retain the current membership structure. The new agreement would create an 11 member board. The agreement would apportion a seat on the board for every 2,979 of population. This ratio would result in the following number of seats for each community: Town of Salem 5; Twin Lakes 2; Paddock Lake 1; Randall 1; and Silver Lake 1. The eleventh spot on the board would be a local school representative. Following the adoption of the new agreement, each municipality would then consider a second resolution that outlines the appointment of board members. The second agreement or resolution would then create a method for each Municipality to have two representatives on the Community Library Board. The second agreement will create a method for the Town of Salem to appoint three of its Board positions, one from each community that only has one representative in the new agreement. Nominations would be forwarded to Salem by Paddock Lake, Randall, and Silver Lake. While there is the need for a level of trust that has to be understood, considering the excellent history of cooperation between the parties, I see no reason that this should not work well and retain the equality of representation.

Please let me know if you have questions or concerns regarding this proposal. You can contact me by email at dtesar@townofsaalem.net. I would like to hear from you as soon as possible so I know if we can move forward on this or need to meet as a group to better understand our options, which I recommend.

Sincerely,

Diann Tesar
Town Chairman

COMMUNITY LIBRARY AND JOINT OPERATING AGREEMENT

Pursuant to the provisions of Section 43.53 of the Wisconsin Statutes, this Agreement is made and entered into by and between the Village of Paddock Lake, the Town of Randall, the Town of Salem, the Village of Silver Lake and the Village of Twin Lakes, all in Kenosha County, Wisconsin.

RECITATION

On February 20, 1980, the Village Board of the Village of Paddock Lake unanimously passed Resolution No. 49 to cooperate in an agreement for the establishment, maintenance and upkeep of a joint municipal library to provide library services to the community.

On April 1, 1980, residents of the Town of Salem responded affirmatively to a referendum favoring the establishment of a joint municipal library.

The Boards of the Village of Paddock Lake, Town of Salem, and Village of Silver Lake have all subsequently adopted Resolutions authorizing the participation of the Village of Twin Lakes and the Town of Randall in said joint library system.

On June 8, 1992, the Village Board of Twin Lakes unanimously passed Resolution No. R-92-62 expressing the intention of the Village of Twin Lakes to join the Community Library System and enter into this joint operating agreement.

On June 11, 1992, the Town of Randall passed a resolution to join the Community Library System.

- A. This Agreement is entered into between the Village of Paddock Lake, The Town of Randall, The Town of Salem, The Village of Silver Lake, and the Village of Twin Lakes for the purpose of re-creating and re-establishing a Joint Library Board to operate a public library at 319 E Lake Street Silver Lake, Wisconsin, 24615 89th Street Salem, Wisconsin, 110 S. Lake Street Twin Lakes, Wisconsin, and/or such other location or locations as the Board may hereinafter determine.
- B. The Joint Library Board shall have all the powers provided in Section 43.58, Wisconsin Statutes and any other applicable Wisconsin Statutes relating to libraries and shall be appointed by the Village President or Chairperson of the municipality with the advice and consent of their respective Boards, or the Administrator of the school district and be composed as follows:

Five members appointed by the Town of Salem.

Two members appointed by the Village of Twin Lakes.

One member appointed by the Village of Paddock Lake.

One member appointed by the Village of Silver Lake.

One member appointed by the Town of Randall.

One member appointed by school administrators as provided in paragraph D.

The number of members appointed by each participating municipality shall be adjusted in the year following decennial census so that the number of appointments of a participating municipality is proportionate to its population as shown by the most recent Federal census.

- C. The term for each member appointed by the participating municipalities shall be for three (3) years. The initial term of the members shall be established by the Library Board President with the advice and consent of the Library Board and shall be staggered so that no more than four (4) members' terms shall expire in any one year, and that no two terms of members from a single municipality shall expire in the same year. Thereafter each regular appointment by a municipality shall be made for a term of three (3) years and shall expire at the end of the calendar year.
- D. Upon the expiration of the term of the Joint Library Board member appointed by the administrator of Wilmot High School, a member shall then be appointed by the Administrator of Westosha Central High School, and confirmed by its governing board for a period of three years. The school representative shall continue to alternate for three year periods between the two schools. Any member appointed to be a school representative shall be a resident of that school district. The Community Library Staff shall notify the Administrator of the school next eligible to appoint a member to the board.
- E. Each and every board member shall be a resident of the respective municipality or school district and may not be an employee or independent contractor of the Community Library.
- F. Vacancies on the Board shall be filled within sixty (60) days by appointment of any unexpired term by the appointing authority in the same manner as original appointments are made.
- G. As soon as practicable after the recreation of the eleven member Joint Library Board, its members shall organize and elect from their number a President, Vice president, Secretary, Treasurer, and other such officers as they deem necessary. The term of each officer elected shall be for one year and shall run from June 1 thru May 31 of the following year.

Each May the Joint Library Board shall elect a new Vice president, a Secretary, Treasurer, and other such officers they deem necessary. The current Vice president shall succeed the President. The current President may not be elected Vice president.
- H. A majority of the members of the Joint Library Board shall constitute a quorum.
- I. No compensation shall be paid to members of the Joint Library Board for their services, but they may be reimbursed for actual and necessary expenses incurred if so authorized by the Joint Library Board.
- J. The Joint Library Board shall have authority of approval of all contracts, agreements, etc with the Community Library.

- K. The Board shall appoint a librarian who shall appoint assistants and employees as he/she deems necessary, and shall determine their duties. These appointments shall only be made with the advise and consent of the Joint Library Board. The Joint Library Board shall determine their compensation.
- L. The Village of Twin Lakes shall be designated as fiscal agent for the Joint Library to serve until a majority of the participating municipalities designate a successor fiscal agent. The fiscal agent shall be compensated by the library for all costs incurred as fiscal agent. The fiscal agent shall be responsible for the over site of all financial transactions of the joint library, and shall be responsible for having the Joint Library audited on an annual basis by the independent auditor performing this function by the fiscal agent. Additional functions of the fiscal agent shall include, but are not limited to: over site of all income and payables, over site of payroll, Implementation and management of a fringe benefit program for employees as determined by the Joint Library Board.
- M. The payroll of the Community Library shall be paid by the fiscal agent on checks issued in the name of the fiscal agent. All expenses of payroll shall be reimbursed to the fiscal agent by the Community Library immediately after the checks are issued.
- N. The librarian and other employees of the joint library shall be considered and treated as employees of the Fiscal Agent for payroll, tax withholding purposes and for the purpose of handling fringe benefits (i.e. retirement, social security insurance).
- O. The Treasurer of the Joint Library Board shall continue to keep accurate records of all Community Library receipts and expenditures. Under the auspices of the treasurer, staff of the Community Library shall continue to do payroll, accounts payable, and accounts receivable through the accounting system of the fiscal agent. Staff shall prepare a detailed list of all payables which shall be presented to the Joint Library Board for approval. This list shall be accompanied by all invoices, vouchers, etc. as required by the Joint Library Board. The Library Board shall provide all information to the fiscal agent as provided in Wisconsin Statutes 43.58 sub 1 and sub 2.
- P. The Community Library shall be funded by the participating municipalities as currently prescribed by Wisconsin Statutes, or as modified by future changes in law. Payment of Tax funds collected by each municipality for the Community Library or the amount of such sum budgeted for the operating expenses of the Community Library by each municipality shall be paid to the community Library in monthly installments on the 15th day of each month
- Q. This agreement shall be in effect from the date of execution by each municipality for a period ending December 31, 2016 and shall continue thereafter from year to year on a calendar basis unless any party gives written notice to the other parties not less than eighteen (18) months prior to the end of the calendar year. If termination of this agreement results in closing of the library, the assets thereof including land and buildings shall be divided among the five municipalities with the ratio of expense sharing in existence in the year of termination, and in compliance with current agreements relative to land and buildings.. In the event of a dispute with respect to

the distribution, all assets exclusive of land and buildings shall be sold with the proceeds thereof distributed on the same basis.

This Agreement approved and accepted:

VILLAGE OF PADDOCK LAKE

Date: _____

By: _____
President

Attest: _____
Clerk

VILLAGE OF SILVER LAKE

Date: _____

By: _____
President

Attest: _____
Clerk

TOWN OF RANDALL

Date: _____

By: _____
President

Attest: _____
Clerk

VILLAGE OF TWIN LAKES

Date: _____

By: _____
President

Attest: _____
Clerk

TOWN OF SALEM

Date: _____

By: _____
President

Attest: _____
Clerk

COMMUNITY LIBRARY BOARD APPOINTMENT AGREEMENT

WHEREAS, the Towns of Randall and Salem and the Villages of Paddock, Silver Lake, and Twin Lakes are participating members in a Community Library under the terms of a Joint Operating Agreement; and

WHEREAS, the provisions of Sec. 43.54(1m)(a)(1) require that joint libraries be governed by a Board consisting of seven to eleven members and that the board members be representative of the populations of the participating municipalities; and

WHEREAS, the participating municipalities under the terms of the Community Library Joint Operating Agreement have, for many years, determined that the appointment of Board Members in equal number by each of the participating municipalities is representative of the populations of the participating municipalities; is an equitable and reasonable method of determining appointments to the Library Board; and that such equal representation by the participating municipalities is the most effective means of establishing a Board governing the Community Library which serves all of the participating communities; and

WHEREAS, in acknowledgment of the foregoing, the participating municipalities wish to enter into an agreement regarding the appointment of members of the Community Library Board as follows:

1. To the extent that any participating municipality in the Community Library Joint Operating Agreement is authorized under its terms to appoint more than two members to the Board of the Community Library, such municipality agrees to appoint as a Community Library Board member an individual nominated by the Village President or Town Chairperson of a participating municipality which is authorized to appoint only a single member to the Library Board under the terms of the Community Library Joint Operating Agreement.
2. Notwithstanding the provisions of Paragraph No. 1 of this Agreement, no participating municipality in the Community Library shall designate more than two persons to serve as Board Members on the Community Library Board.
3. The procedure to fill a vacancy on the Library Board created by the resignation or removal of an appointee shall be as follows:
 - a. If the vacancy is created by the resignation or removal of a member originally appointed by a participating municipality having the authority to appoint two or more Board members under the terms of the Joint Operating Agreement, the Village President or Town Chair shall appoint a replacement as provided in the Joint Operating Agreement. For purposes of this section, a member of the Board is originally appointed by a participating municipality if he or she or his or her successor was appointed by that participating municipality as of the effective date of this agreement.

- b. If the vacancy is created by the resignation or removal of a member originally appointed by a participating municipality which does not the authority to appoint two or more Board members under the terms of the Joint Operating Agreement, the Town Chair or Village President of the originally appointing municipality shall, within 90 days of the date the vacancy is created, designate an appropriate replacement to the Chair Person or Village President of a participating municipality having the authority under the terms of the Joint Operating Agreement to appoint more than two members to the Library Board. The Chair Person or Village President of the participating municipality having authority to appoint more than two members shall appoint such designed replacement. If the Town Chair or Village President of the originally appointing municipality fails to designate a replacement within 90 days, the Chair Person or Village President of the participating municipality having authority to appoint more than two members may appoint a replacement.
4. It is the intention of the participants in this Agreement that each participating municipality in the Community Library shall effectively have the ability to name two members of the Board of the Community Library.
 5. This agreement shall be in effect from the date of execution by each municipality for a period ending December 31, 2016 and shall continue thereafter from year to year on a calendar year basis unless any party gives written notice to the other parties not less than six (6) months prior to the end of the calendar year of such party's intention to terminate the agreement.

This Agreement approved and accepted:

VILLAGE OF PADDOCK LAKE

Date: _____

By: _____
President

Attest: _____
Clerk

VILLAGE OF SILVER LAKE

Date: _____

By: _____
President

Attest: _____
Clerk

TOWN OF RANDALL

Date: _____

By: _____
President

Attest: _____
Clerk

VILLAGE OF TWIN LAKES

Date: _____

By: _____
President

Attest: _____
Clerk

MEMORANDUM

TO: Pat Casey, Town Administrator
FROM: Richard Scholze
DATE: May 6, 2015
RE: Community Library Agreement

In response to the letter dated April 21, 2015, from Kenosha County Library System to the Salem Town Board, I contacted and had a lengthy conversation with John DeBacher, from the Department of Public Instruction. The purpose of the call was to address the issues raised in that correspondence, and to explore some options that might be available to the Town in response to it.

The position of the DPI and the Kenosha County Library System is that the Joint Library Agreement for the Community Library in which Salem participates does not meet the requirements of the statutes with regard to agreements for joint libraries.

As I indicated in an earlier memo on this topic from September, 2009, I am of the opinion that the agreement does not technically meet the requirements of the statute in that it does not contain some language with regard to adjustment of the make up of the Board of Directors for the joint library, as required by the statute. I am not sure I am able to draft language, however, which would meet the requirements of the statute and which would still make any sense for the participants in the Community Library.

However, the DPI position, echoed by the County Library System, is that the state has the authority and, apparently, the duty to withhold some funds from the Kenosha County Library System because the Kenosha County System has a Member Library Agreement with the Community Library, and the Community Library, in turn, does not meet statutory requirements.

I disagree with the interpretation of DPI with regard to the application of the provisions of Sec. 43.54(1m)(a)(1), and also its interpretation of the ramifications of that alleged non-compliance as set forth in Sec. 43.18(2m). However, I am also certain that I will never convince DPI and the Kenosha County Library System to interpret the statutes in the way in which I interpret them. Therefore, it appears that the Town has a number of possible options to deal with this situation, including the following:

1. Revise the existing agreement. Obviously, this would require the cooperation of the other participating municipalities in the Community Library. While it seems to me counterproductive to reopen and renegotiate an agreement which is working quite well for the participating municipalities, that appears to be the course of action preferred by the Kenosha County Library System and DPI.

One issue which would need to be addressed, obviously, in the revised agreement is the make up of a Board of Directors for the Community Library. The statutes require the Board to be not less than seven nor more than eleven members, and that the participation is to be "representative of the populations of the participating municipalities". Frankly, I have no idea what is intended by that language. It does not appear to be the intention of legislature that the representation must be in proportion to the population of the participating municipalities. This is true for at least two reasons. One, is that if the legislature had intended the representation to be proportionate to the population, it could have said so in the statute.

A second reason that this is not the likely interpretation of the section is that it is unlikely that the math for proportionate representation on the Board would work in the case of the Community Library. I have not investigated the current populations of the participating municipalities, but it is my understanding that Salem, as the largest municipality, has a population which is significantly larger than the population of the smallest participating municipality. If the proportional representation were required, but each municipality was still required to have at least one representative of the Board of Directors, it is unlikely that the ratios would work out if the Board size is limited to eleven members.

2. Revise Agreement with Gentlemen's Agreement. Another option available to the Town and other participating municipalities is to revise the Agreement to bring it into compliance with the statutory requirements to the extent that is possible. In conjunction with that option, the participating municipalities could enter into a "Gentlemen's Agreement" under the terms of which the Town of Salem, having the largest population and, therefore, having the largest population and, therefore, having the authority to appoint the most members, would agree to make appointments of representatives as requested, suggested, or designated by the other participating municipalities. In my opinion, this would meet the technical requirements of the statute, but still would give the participating municipalities the same voice in appointing members of the Board of Directors for the Community Library. During my lengthy discussion with Mr. DeBacher of the DPI, he suggested that this might be a possible option. His position in this regard is, frankly, puzzling to me. If the requirements of the statute are that the alleged non-compliance of the Community Library may result in its expulsion from the Kenosha Library System, it would seem inappropriate for the participating municipalities to circumvent those requirements by some sort of "Gentlemen's Agreement". However, this is an option.

3. Dissolve Community Library. Another option available to the participating municipalities is to dissolve the Community Library. In my opinion, this is a poor result that is a disservice to the residents of the participating municipalities. In my opinion, it will also lead to further complications with regard to the division of the jointly owned assets, i.e., library building in Salem, and the distribution of the other assets of the Community Library participants.

4. Discontinue Association with the Kenosha County Library System. It appears that the trigger for scrutiny of the terms of the Community Library Agreement by DPI and Kenosha County Library System is the fact that the Community Library participates as a member of the Kenosha County Library System. I note that there is an Agreement executed as of October 27, 2014, entitled "2014 Kenosha County Library System Member Library Agreement - Community Library." The term of that Agreement ends on December 31, 2015. Obviously, one downside of that course of action would be that the Community Library would not have resources available to it as a participating member of the Kenosha County Library System. Perhaps, more importantly, the Agreement provides for payment by the Kenosha County Library System to the Community Library in 2015 of funds totaling \$229,516. Those funds would not be available in the future if the Community Library were not a participant with the Kenosha County Library System.

5. Seek a Legislative Solution. The participants of the Community Library could lobby for a change in the statutes, which would remove the language requiring membership on the Board of Directors of the joint library to be "representative of the populations of the participating municipalities." If that language were deleted from the statute by legislative action, the issue raised by both DPI and Kenosha County Library System would no longer exist and the current agreement among the participating municipalities in the Community Library could remain in effect. I have no information with regard to the likelihood of a legislative solution to this issue. I am not familiar with the rationale for including the language in the current statute regarding membership on the Board of Directors being representative of the population of the participating municipalities. It seems to be of no particular benefit to any of the participating municipalities. Perhaps, the legislature could be convinced to modify the language simply to require that there be a minimum one representative of each participating municipality although this presents its own problems.

For example, it is possible that more than eleven municipalities in any one county could agree to operate a joint library. While this is unlikely, it would mean that if Board is limited to not more than eleven members, one of those participating municipalities would not have any representation on the Board. However, that problem already exists in different forms with the language as it currently stands in the statute.

6. Defend Expulsion. In the correspondence dated April 21, 2015, from Kenosha County Library System, Ms. Brattin indicates that the Kenosha County Public Library System has the authority pursuant to Sec. 43.18(2) to expel or reduce aids or services to a library that fails to comply with state statutes. Her paraphrase of that section of the statutes is not exactly accurate. Section 43.18(m) provides as follows:

EXPULSION. "With the approval of the Division, a public library system may expel, or reduce aids or services to, a municipality or county that fails to meet the requirements under Section 43.15(2) or (4)".

Section 43.15(2) requires that each county proposed to be included within the system shall demonstrate to the satisfaction of the division, its ability to provide adequate

funding to implement the plan it is required to submit under Section 43.11(3) and the report required under 43.13(1). Obviously, the Community Library is not violating that provision. Section 43.15(4) is entitled Method of Organization. Sub (c) provides as follows:

A municipal county or joint public library may participate in a public library system if it meets all of the following requirements:

1. Is established under this chapter.
2. Is located in a county that participates in a public library system.
3. Is authorized by municipal governing body or county to participate in the public library system.
4. Enters into a written agreement with the public library system board to participate.
5. [not included in the statute]
6. Employs a head librarian who has a certified public librarian.
7. Is open to the public, on average, at least twenty hours each week.
8. Annually spends at least \$2,500 on library materials.

The Community Library clearly meets the requirements of Paragraph Nos. 2, 3, 4, 6, 7, and 8. The provision of which it might arguably not meet is that it "is established under this chapter." However, the Community Library was established under Chapter 43 of the Wisconsin Statutes. This statute does not require that it currently meet all of the requirements of Chapter 43. So, even if one were to accept the position of the Kenosha County Library System and DPI that the existing agreement somehow violates the provisions of Section 43.54, that alleged violation has nothing to do with the fact that the Community Library was established under Chapter 43.

Accordingly, it is my opinion that the Community Library could make a valid argument that there is no basis for expulsion under Section 43.18(2). A hearing would be required for that expulsion as the expulsion procedure is set forth in Section 43.18(3). Moreover, the expulsion provision in Section 43.18(2m) is not mandatory. It appears that there is some discretion.

7. Do nothing. The Town can take no action with regard to the agreement or the proposed expulsion from the library system. That would likely result in the Community Library being expelled from the Kenosha County Library System (assuming the other participating municipalities also do nothing). That, in turn, would result in a loss of some shared revenues from the Kenosha County Library System, and also the ability to participate in sharing of materials and other benefits accorded to participants in the Kenosha County Library System.