

Municipal Home Rule Law §§ 10, 11(1)(c), 36, 36(5)(a); Session Laws 1908, Ch 454 § 244, 1908, Ch 454 § 247, 1908, Ch 454 § 249; Education Law §§ 2(8), 214, 216, 216(1), 259(1), 260(1); General Construction Law §§ 65(c)(2), 66(6)

City charter cannot be amended locally to change the budget process as it relates to monies used by the library. Such amendments would encroach on the State's authority over education and would violate the prohibition of Municipal Home Rule Law § 11.

July 13, 2012

David S. Merzig
City Attorney
City of Oneonta
City Hall
258 Main Street
Oneonta, New York 13820-2589

Informal Opinion
No. 2012-4

Dear Mr. Merzig:

You have requested an opinion regarding whether the City is authorized to amend the provisions of its charter that relate to the public library. The City has appointed a charter revision commission in accord with Municipal Home Rule Law § 36. You have explained that as part of its review and recommendations relating to the charter, the commission has proposed certain changes to the budgetary process as it relates to the monies used by the library. You therefore have asked whether the City has the authority to adopt this type of charter amendment. As explained below, we are of the opinion that the City is not so authorized.

The state law that established the City's original charter included provisions relating to the library. Pursuant to that state law, the library is managed by a board of trustees, who are appointed to five-year terms by the mayor subject to the approval of the common council. Act of May 21, 1908, ch. 454, § 244, 1908 N.Y. Laws 1369, 1476;¹ see also Education Law § 260(1). The powers of the board of trustees include selecting its president and secretary from among its members; having exclusive care, custody, management, and control of the public library and its property; paying the salaries of its librarian and library employees and other expenses in the care and maintenance of the library; and applying to the State for grants. Chapter 454, § 247, 1908 N.Y. Laws

¹ The library provisions of the City's charter were amended by state law in 1922 to reflect a change in the name of the library. Act of April 3, 1922, ch. 450, §§ 6-9, 1922 N.Y. Laws 958, 961-63.

at 1477-78. These provisions, like those described immediately below, appropriately remained intact in the charter when the City revised it in 1964.

The power of the library board of trustees to raise money by taxes, and the procedure for doing so, also was established by state law in the City's original charter. Chapter 454, § 249, 1908 N.Y. Laws at 1478-79. The board prepares a statement of the sums of money it deems necessary for the upcoming fiscal year and submits it to the mayor for approval. Id. The mayor can veto items in the statement, which the board of trustees can override by four-fifths vote. Id. The final statement is filed with the city clerk, and the common council then includes the amount in the statement in the annual levy for school taxes. Id. The taxes are collected by the city chamberlain, who deposits them into a separate library fund. Id. Moneys of the fund are paid out by the chamberlain upon an order of the board of trustees signed by the board's president and secretary. Id.; see also Education Law § 259(1) (local government assesses and collects taxes on behalf of library; library funds may be expended by treasurer for local government only under direction of library trustees).

As a public library, chartered by the Board of Regents, the library is not a department of the City but instead is an education corporation, "distinct and separate" from the local government that assesses and collects taxes on its behalf. Education Law §§ 216, 216-a(1); General Construction Law §§ 65(c)(2), 66(6); Buffalo & Erie Co. Public Library v. County of Erie, 171 A.D.2d 369, 372 (4th Dep't 1991); aff'd on opn. below, 80 N.Y.2d 938 (1992). It is in fact a component of the State's education system. See Education Law § 2(8) ("higher education" includes educational work connected with libraries); id. § 214 (institutions of University of State of New York include incorporated libraries); see also Op. St. Comptr. 83-96.

The city charter commission is charged with reviewing the existing city charter and preparing a draft of a proposed new or revised charter. Municipal Home Rule Law § 36(5)(a). The proposal "may contain such provisions or effect such results as may be made or effected by local law" pursuant to the Municipal Home Rule Law. Id.

The Municipal Home Rule Law grants broad authority to a local government to adopt local laws, including with respect to its "property, affairs, and government," which presumably includes the City's budget process. Municipal Home Rule Law § 10. This authority, however, is not unlimited. Education is an area of state concern and therefore a local government may not adopt a local law that supersedes the State's laws in the area. Lanza v. Wagner, 11 N.Y.2d 317, 326 (1962) ("public education shall be beyond control by municipalities and politics"); Bd. of Educ. of Union Free Sch. Dist. No. 4 of Town of Greece v. Bd. of Educ. of City of Rochester, 23 A.D.2d 805 (4th Dep't 1965); Op. Att'y Gen. (Inf.) No. 83-13 (local law relating to students of community college not authorized); Op. St. Comptr. No. 83-96 (local law granting library board

authority to mandate amount to be appropriated by sponsoring local government not within local government's power to adopt). Indeed, the Legislature explicitly has prohibited local legislation that supersedes state law in certain areas, including the "maintenance, support or administration of the educational system in such local government." Municipal Home Rule Law § 11(1)(c). We are of the opinion that the City's charter cannot be amended locally to change the budget process as it relates to monies used by the library because such amendments would encroach on the State's authority over education and would violate the prohibition of Municipal Home Rule Law § 11. Such changes would require state legislation. Cf. Op. Att'y Gen. (Inf.) No. 2007-6 (city cannot amend charter to abolish state-created independent water board).

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions