



## Ask the Lawyer

A RRLC member service

## RAQ Reply to Member

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### MEMBER QUESTION

**Topic:** Fiscal controls for libraries and Friends groups

**Date submitted:** March 17, 2023

*There seems to be a trend for libraries that have Friends groups to hold fundraisers, donations, and membership drives at the library. In some instances, the library collects money for the Friends and pays it to them at a later date. Considering the cash handling procedures libraries have to worry about, is it allowable for libraries to collect Friends membership dues and donations then pay it back to the Friends?*

### WNYLRC ATTORNEY'S "RAQ" RESPONSE

**From:** Stephanie A. Adams, Esq.

**Date:** May 16, 2023

**Member:** OWWL Library System

Ideally, a public library does NOT handle the money of another entity, even for "Friends." Ever.

That said, there is no law barring a library from helping out a partner or organization with cash handling for events; this "never" rule comes from risk management, not the law.

What risks are managed by this "never" rule? All the risks that come with handling funds, including:

- The risk that cash is not properly counted;
- The risk that the cash is misplaced or stolen;

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- The risk that cash is from sales requiring sales tax;
- Accusations (even if unfounded) of mis-handling or theft;
- Improper attribution of income to the library;
- Consumer or regulatory agency confusion about who transactions were with.<sup>1</sup>

None of these are risks that can be totally eliminated, but they can be mitigated. Sometimes, there may be very compelling reasons to break the "never" rule so the library can help another entity (including Friends) and mitigate the risk as best as possible.

So my answer to the question "*...is it allowable for libraries to collect Friends membership dues and donations then pay it back to the Friends?*" is: YES, but it should only be done for the right purpose, with the right preparation, and per the right policy.

What is "the right purpose?" That is up to your library and its policies. But certainly, helping Friends or other affiliated organizations support the mission of the library can qualify.

What is "the right preparation?" It starts with the "right policy."

If the limited capacity of the Friends (or another allied organization) means the library must help with cash handling (facilitating sales, accepting donations, forwarding the monies to the Friends), there should be a policy at both organizations addressing this approach.

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<sup>1</sup> For instance, a person thinking that they made a donation to the library, but really, it was to the Friends. Or the IRS thinking a donation went to the library, but really, it went to the Friends. This also relates to the risk that the money could be considered subject to New York State Finance Law and Executive Law.



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A sample policy<sup>2</sup> for the library is:

### **Fiscal Controls When Collaborating with Another Entity**

*To reduce costs and avoid risk, whenever possible, the Library will not support or serve as the agent for collecting donations or revenue for another entity with which it is jointly providing programming.*

*However, from time to time, the Library may help present an event that requires the coordinated payment, acceptance, and transfer of money or in-kind donations between the Library and the collaborating party. When that is the case, to ensure adherence to all relevant laws, regulations, and policies, every such event shall be governed by written, signed terms for the handling of such monies. Such written, signed terms shall be tailored to the specific circumstances of the event and shall set out the manner in which the parties will abide by all relevant policies, including but not limited to:*

- *Conflict of Interest*
- *Fiscal Controls (including those governing cash handling, acceptance of payment, payments, approved credit card use, acceptance of credit cards/PCI compliance, deposit, remission of funds, and accounting)*
- *Bar on political activity*
- *Relevant tax considerations*

*The written agreement shall be reviewed and approved by the Treasurer before being signed by the Director, no less than two weeks before the event.*

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<sup>2</sup> As with any template, the final version of the policy should be reviewed by your library's lawyer before being adopted by the board of the library.

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*For entities that frequently collaborate with the Library (local charities, Friends, etc.), a standing agreement reviewed once per year by the respective organizations may be used, so long as it contemplates all forms of accepting and remitting money and confirms the process for the sharing or remission of the same.*

A sample<sup>3</sup> Letter Agreement is:

**RE: [NAME OF EVENT]**

*Dear [Treasurer of Friends]:*

*The Library is looking forward to the event on DATE at the Library.*

*At the event, the Friends will be accepting donations via cash, credit card, and check. While the credit card transactions will be completed via a service maintained by the Friends, the Library staff will be assisting with the acceptance of cash and checks by providing a secure location to store them until deposit per the Library's process for securely holding cash.*

*Per Library policy, at no point will one Library employee be responsible for receiving, counting, and securing cash on site (all transactions must include two Library employees).*

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<sup>3</sup> As with any template, the final version of the letter should be reviewed by your library's lawyer before being used by the library.

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*The Treasurer of the Friends will sign an acknowledgement confirming the amount of cash and number of checks turned over to the Friend's Treasurer for deposit. The receipt will be retained by the Library for a minimum of 6 years.*

*If such sales are made as part of the event, the Friends will be responsible for collecting and remitting any sales tax owed for any sales of retail items.*

All of this being said, it is the sign of a strong "Friends"—or any type of not-for-profit organization—for the organization to have its own fiscal control policies and to be ready to competently receive and account for donations.

While it is not the "sexy" part of a charitable mission, fiscal controls (and the ability to security accept money) is a critical infrastructure. So, when recruiting leadership for "Friends," taking the time to find a few volunteers who are familiar with accounting is a worthwhile investment!

Thank you for an important and nuanced question.

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