

## **Legal Opinion: Community Political Groups and Access Kimball Library Meeting Rooms**

*The Library Director sought legal advice on the question of whether local candidates for public office could use a library meeting room for a free meet and greet event. The following is the advice received from Stephen C. Buckley, Legal Service Counsel, New Hampshire Association: on March 9, 2022.*

The beginning point in assessing the degree of control the library can exercise over the types of persons and organizations that can use the library meeting room for events and functions starts with determining what type of forum the library meeting room is.

Local government need not permit all forms of speech on property that it owns and controls. *International Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992). The standards by which limitations on speech must be evaluated differ depending on the character of the property. Government property generally falls into three categories — traditional public forums, designated public forums, and limited public forums. *State v. Bailey*, 166 N.H. 537, 541-42 (2014).

A designated public forum is government property that the government has opened for expressive activity by part or all of the public. The regulation of speech on this type of property is subject to the same limitations as that governing a traditional public forum. *Doyle v. Comm'r, N.H. Dep't. of Res. & Econ. Dev.*, 163 N.H. 215, 221 (2012). The public meeting room at the Kimball Public Library Meeting room would be deemed a designated public forum.

It is an elementary rule that the government may not exclude speech on the basis of its content from a designated public forum, unless the exclusion is necessary to serve a compelling state interest which cannot be served by a less restrictive action. *Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 803 (1985).

The Kimball Public Library could not exclude a political candidate from hosting a free meet and greet program in a meeting room unless that exclusion served a compelling governmental interest. There are very unique and narrow circumstances where government has a compelling governmental interest to ban electioneering speech inside of a polling place. *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876 (2018). Concerns for maintain a polling place free from intimidation would not at all apply to a library meeting room. That being the case, the Kimball Library would not have a compelling governmental interest to exclude political candidates from using its public meeting rooms. Any such exclusion of political candidates, while permitting other groups and individuals to use the meeting room for expressive activity, would be impermissible viewpoint discrimination that would violate both the NH Constitution, Part I, Article 22 and the U.S Constitution, First Amendment.

Consequently, a public library cannot legally deny a group of local candidates from hosting a free meet and greet program in a library meeting room. Furthermore, a public library could not insist that all candidates be formally invited to such a meet and greet event. Finally, a public library meeting room policy cannot be written to expressly prohibit use by political groups. However, there might be circumstances where a proposed religious worship service at the library meeting room might run afoul of the First Amendment, Establishment Clause. *Good New Club v. Milford Central School*, 533 U.S. 98 (2001).

*In November of 2022, an assertion was made that it was illegal for a political group to have campaign literature inside a meeting room where they were hosting an event. Posting political campaign language in the library generally or on the grounds was already understood to be impermissible. The Library Director again sought legal advice. On November 3, 2022, Attorney Buckley responded:*

Consistent with my prior advice on this subject, a public library cannot legally deny candidates for public office from hosting a meet and greet event in a library meeting room. This would include the ability to distribute written information inside that meeting room. A public library meeting room policy cannot be written to expressly prohibit use by political groups, and nor could it prohibit distribution of written information while that political group was using the meeting room. What that political group could not do is post that literature outside the meeting room or on the grounds of the library.

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