



City of Homer

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Memorandum

Agenda Changes/Supplemental Packet

TO: LIBRARY ADVISORY BOARD
FROM: RENEE KRAUSE, DEPUTY CITY CLERK II
DATE: NOVEMBER 21, 2023
SUBJECT: SUPPLEMENTAL PACKET

STAFF & COUNCIL REPORTS/COMMITTEE REPORTS

D. State of Alaska Attorney General Letter to Librarians

Memorandum from Library Director as backup.

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City of Homer

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Homer Public Library

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Memorandum

TO: Library Advisory Board
FROM: David Berry, Library Director
DATE: November 20, 2023
SUBJECT: Attorney General's Letter to Librarians

On Nov. 16, the Attorney General of Alaska posted a public letter to all school and public libraries in the state. The letter reviews state laws governing sexual offenses against minors, and warns librarians that including “indecent materials” in the library collection may be a prosecutable offense if minors are able to find those materials.

The opening paragraph reads, in part:

In my capacity as Attorney General, I have been approached many times by concerned parents, community members, and members of school boards. Specifically, these concerns have focused on books that have graphic depictions of sexual content that are available for viewing by children and teenagers. Considering these concerns, you should be aware of the legal framework that prohibits certain actions regarding minors and indecent materials.

The concluding paragraph reads, in part:

The purpose of this letter is to bring awareness and assist school districts and libraries in complying with the law. Of note is that there are no exceptions to any of the laws listed above for administrators, teachers or for librarians....My recommendation is for you to review your policies and the conduct of both your organization as a whole and of individual employees to make sure they are compliant with applicable state and local law.

The letter notes that “neither state nor federal law have education or library specific laws relevant to what materials a library may provide,” and page 13 of the library’s policies addresses the question directly:

Responsibility for the reading choices and information access by children rests with their parents and legal guardians, not the library. Parents who wish to limit or restrict the reading of their own child should personally oversee that child’s choice of library resources. Selection of library materials will not be inhibited by the possibility that items may be seen by children.

The library has a well-developed process for addressing patron complaints, as outlined on pages 23-26 of the same document. Notably, AS 11.61.128 refers to “the prevailing standards in the adult community as a whole” when judging whether any given publication can be considered harmful. Homer has recently gone through a major public debate regarding this very issue, and I believe the community has clearly established its standards.

For the moment, I am not asking for any action from the LAB.

RECOMMENDATION

For information.



November 16, 2023

Via U.S. Mail

Dear Alaska School and Public Libraries,

As you are aware, over the past year members of the public have raised significant concerns regarding books that may be viewed by, and made available to, minors in certain school or public libraries. In my capacity as Attorney General, I have been approached many times by concerned parents, community members, and members of school boards. Specifically, these concerns have focused on books that have graphic depictions of sexual content that are available for viewing by children and teenagers. Considering these concerns, you should be aware of the legal framework that prohibits certain actions regarding minors and indecent materials. The purpose of this letter is to help inform public servants on what the law is so that no one is caught off guard. You should conduct a review and take steps to assure that your organizations are not violating the law. These laws fall into three categories: state criminal laws, municipal ordinances, and certain state and federal education laws.

I. State Criminal Law

The following three criminal statutes are most relevant to the circumstances at issue: distribution of indecent materials to minors (AS 11.61.128), enticement of a minor (AS 11.41.452), and contributing to the delinquency of a minor (AS 11.51.130). Depending upon the facts of a specific case, other statutes may be implicated.

- **Distribution of Indecent Material to Minors, AS 11.61.128**

For this offense, the State is required to prove the following:

- 1) the defendant was 18 years of age or older;
- 2) the defendant intentionally distributed or possessed with the intent to distribute material to a child under 16 years of age or to a person the defendant believed was a child under 16 years of age;
- 3) the defendant knew the material depicted actual *or* simulated sexual penetration; the lewd touching of a person's genitals, anus, or female breast;

- masturbation; bestiality; the lewd exhibition of a person's genitals, anus, or female breast; or sexual masochism or sadism; and
- 4) the material was harmful to minors.

“Harmful to minors” means that the (1) the average individual, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest in sex for persons under 16 years of age; (2) a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and (3) the material depicts actual or simulated conduct in a way that is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for persons under 16 years of age. Except in limited circumstances, violations of this statute are punishable as a class C felony offense.

- **Enticement of a minor, AS 11.41.452**

To prove this offense, the State is required to prove the following:

- 1) the defendant was 18 years of age or older;
- 2) the defendant knowingly communicated with another person to entice, solicit, or encourage the person to engage in any of the following acts: sexual penetration; the lewd touching of another person’s genitals, anus, or breast; the lewd touching by another person of the child’s genitals, anus, or breast; masturbation; bestiality; the lewd exhibition of the child’s genitals; or sexual masochism or sadism; and
- 3) the other person was a child under 16 years of age, or the defendant believed that the other person was a child under 16 years of age.

Except in limited circumstances, enticement of a minor is a class B felony offense. This statute does not require proof that the other person engaged in the act; mere enticement, solicitation, or encouragement is enough to be found guilty of this offense. Please also note that for a defendant to be guilty of this offence, the enticement, solicitation, or encouragement to engage in the acts does not need to be with the defendant or in front of the defendant; it is a violation of this offense if the defendant entices, solicits, or encourages a child under 16 to engage in these acts with anyone, including another child or themselves.

- **Contributing to the Delinquency of a Minor, AS 11.51.130**

To prove this offense, the State is required to prove the following:

- 1) the defendant was 19 years of age or older, and

- 2) the defendant knowingly aided, induced, caused, or encouraged a child under 18 years of age to do any act prohibited by state law.

A theme that runs through these statutes is the protection of minors. Therefore, an important factor in any analysis is the availability of the described materials to minors under the age specified in each statute. As with any situation, before proceeding with charges, the prosecuting attorney will review the facts of a case to ensure there is sufficient admissible evidence to support each element of each offense beyond a reasonable doubt.

II. Municipal Ordinance

Municipalities may also pass ordinances that address similar behaviors to what is mentioned above. For example, the Anchorage municipal code makes it a class B misdemeanor to disseminate indecent material to minors under section 8.50.220. Dissemination of indecent material occurs when a person “knowingly: (1) disseminate[s], distribute[s], or offer[s] to distribute, or exhibit[s] indecent material to a minor...” This sample municipal code is quite broad, and you should do a review of any applicable municipal ordinances to ensure the material in your library complies with municipal code.

III. State or Federal Education Laws

Neither state nor federal law have education or library specific laws relevant to what materials a library may provide. However, if your library is in a school, it is important that you are aware that your library must provide all library records identifying a minor child to any parent or guardian who seeks that information. AS 40.25.140(b). There are no exceptions to this statute.

The purpose of this letter is to bring awareness and assist school districts and libraries in complying with the law. Of note is that there are no exceptions to any of the laws listed above for administrators, teachers or for librarians. As school districts and public libraries navigate compliance with the law, please be mindful of the protections given to public employees who report a violation of state, federal or municipal law, regulation, or ordinance under Alaska’s Whistleblower Act or similar municipal ordinance. My recommendation is for you to review your policies and the conduct of both your organization as a whole and of individual employees to make sure they are compliant with applicable state and local law. I hope this letter is helpful as you navigate and comply or confirm compliance with the law. If you have any questions or concerns, please feel free to contact the Department of Law or work directly with your own legal counsel.

Alaska School/Public Libraries
Re: *Library Books*

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Sincerely,

Treg Taylor
Attorney General