

May 2, 2013

Via E-Mail: swestgate@cslibrary.org

Ms. Susan Westgate
Library Director
Carol Stream Public Library
616 Hiawatha Drive
Carol Stream, Illinois 60188

Re: Election Transition

Dear Susan:

The results of the recent Library Board election and the transition between the old and the Library Boards have raised a series of difficult and interesting legal questions. There are no Appellate Court decisions which clearly answer these questions. There is established law that indicates that the previously-elected members of a governmental body have the ability, so long as they are still in office, to take certain actions, even if controversial, which they have been considering for some period of time, and they wish to put in place before they leave office. The key question is when the newly-elected officials are able to place themselves into office so as to begin legislative actions and whether those actions can strip individuals, whose terms are ending, from their positions.

Historically, the transition in office has taken place at a regularly-scheduled public meeting at which the old Board concludes certain pending actions. The new Board members are then sworn in and begin legislating. The statutes that relate to the transition between old and new Boards vary from government to government. The language regarding some governments seems to imply that the transition is to take place at a meeting and that the old Board remains in its positions until the meeting takes place.

The language regarding Library Boards is not as clear. That language, found principally at: 75 ILCS 5/4-6, seems to permit Library Trustees to choose the time at which they will take oaths of office and meet to organize the Board. There appears to be no prohibition against new Trustees choosing to hold the organizational meeting at a special meeting rather than a regular meeting set by the prior Board. That language seems to give newly-elected officials the ability, by taking an oath of office to place themselves into these elected positions. It is my understanding that the Library Trustees elected in the recent election have, in fact, been sworn in, and have sent out a notice for a special meeting. Members of the existing Library Board, who may no

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longer be in office, have questioned whether this call for a special meeting is appropriate and whether they do not continue in office, at least until the next regular meeting of the Board. The purpose of this letter is for us to offer our view on how this matter would be resolved if litigated. Although we can raise a number of questions about practicality and predictability, we believe that a court would recognize the swearing in of the newly-elected candidates as placing them into the offices for their term. This is not an ideal result because of the uncertainty as to which individuals are currently in office and how issues can be addressed prior to the special meeting. Nonetheless, we believe that the ambiguity in the statute would probably be interpreted as permitting the newly-elected individuals to move forward. The Court might add to its opinion a suggestion that the Legislature should clarify this issue.

We find no language in the statutes or in the Library By-Laws any provisions which clearly guarantees a previously-elected Library Board Member a perfect "four-year term." The language relating to libraries seems to put the onus on the newly-elected officials to qualify and then, if they wish, to notify the public and other parties of their desire to hold an organizational meeting which can be held at a quickly but legally called special meeting rather than a regular meeting. For certainly and predictability, it might be more desirable for these individuals to wait until the next regular meeting of the Library Board was half over and old business had been resolved before seeking to begin their term. Having chosen not to do that, we still think that the law favors their position.

The issues described in this letter could be resolved by the filing of a declaratory judgment lawsuit and requests for an emergency opinion from a circuit court judge regarding the validity of the effectuated transitional process. In light of all of the factors that we have set forth in this letter, we would not be interested in pursuing such a suit because we think that it would be an unnecessary expenditure of public funds.

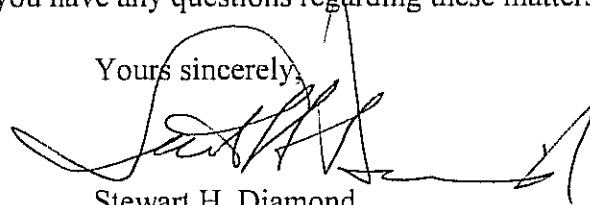
While the transition arguments being put forward by all parties are supported by respectable arguments in law and in fact, we believe that in practice a transition in your new Board has taken place and that the newly-elected Board will be better able to instruct you after its organizational meeting. Because the term of the existing Library Board President appears to have ended, the Vice-President, who continues in office, will serve in that role until the organizational meeting of the new Board. We do not believe that the prior Board currently can meet or have the power to direct your operations. In the event that some decision by the Library Board was necessary to be

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made before the Special Meeting, which we believe has been called for a few days from now, an emergency meeting of the Board, as recently constituted, could be called. We would suggest that you send copies of this opinion letter to the members of the Library Board which has been in place and to the newly-elected Members who have notified you that they have taken the actions necessary to assume their new positions.

Please let me know if you have any questions regarding these matters.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stewart H. Diamond', written over the typed name below. The signature is fluid and cursive.

Stewart H. Diamond

SHD:dar

cc Mr. W. Britt Isaly
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