



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

Illinois State Library
Gwendolyn Brooks Building
300 South Second Street
Springfield, Illinois 62701
217-782-2994

January 10, 2017

Ms. Leslie Bednar, Executive Director
Illinois Heartland Library System
6725 Goshen Road
Edwardsville, IL 62025

Dear Ms. Bednar:

RE: Opinion from the Attorney General/Illinois Library Systems

Within the past year, the attached opinion was sought from the Office of the Attorney General regarding the authority of library system boards to delegate approval of the hiring, firing, and compensation of employees. The Illinois State Library received this response on January 9, 2017; I am transmitting it to you for review and action.

You will want to ensure that all policies and practices that are in place for your library system are consistent with this opinion, dated January 4, 2017, from Lynn E. Patton, Senior Assistant Attorney General. If necessary, development of personnel policies should be addressed, as soon as possible, by your board of directors and upon adoption, forwarded to this office for approval by the State Librarian.

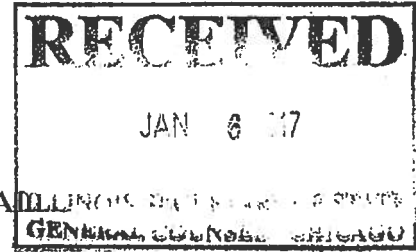
In the event you have any questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Greg McCormick".

Greg McCormick
Acting Deputy Director

cc. Sandy West, Board President



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 4, 2017

I - 17-001

OFFICERS:

Authority of Library System Board
to Delegate Approval of the Hiring,
Firing, and Compensation of Employees

Ms. Cynthia Wood
Assistant General Counsel
Illinois Secretary of State/Illinois State Library
100 West Randolph 5-400
Chicago, Illinois 60601

Dear Ms. Wood:

I have your letter inquiring on behalf of Secretary of State Jesse White whether, pursuant to subsection 7(5) of the Illinois Library System Act (the Act) (75 ILCS 10/7(5) (West 2014)), the board of directors of a library system may authorize the executive director of the library system to hire, determine compensation for, and terminate library system employees without approval from the board of directors. For the reasons stated below, the board of directors of a library system may not delegate discretionary powers, including its statutory approval authority for hiring, compensation, and termination decisions, to the library system's executive director.

BACKGROUND

The Act was enacted to encourage the improvement of free public libraries and cooperation among all types of libraries in promoting the sharing of library resources. 75 ILCS 10/1 (West 2014). By express statutory provision, the Secretary of State serves *ex officio* as the

State Librarian. 15 ILCS 320/2 (West 2014). The State Librarian and his staff are charged with administering the Act and prescribing rules and regulations necessary to carry out the provisions of the Act. 75 ILCS 10/3 (West 2014); *see also* 15 ILCS 320/7(c) (West 2014) (providing that the Illinois State Library administers the provisions of the Act).

The Act provides for the establishment of library systems, which must be approved for operation by the State Librarian. 75 ILCS 10/4(a) (West 2014). The library systems receive funding, in part, from State grants administered by the State Librarian. 75 ILCS 10/8 (West 2015 Supp.).¹ There are currently three library systems in Illinois: the Illinois Heartland Library System (Heartland); the Reaching Across Illinois Library System (RAILS); and the Chicago Public Library System.² Each library system is governed by a board of directors (75 ILCS 10/5 (West 2014)), which constitutes a body politic and corporate (75 ILCS 10/7(8) (West 2014)).

Section 7 of the Act (75 ILCS 10/7 (West 2014)) sets out the several powers of the board of directors of a library system, and provides, in pertinent part:

Each board of library directors of a system shall carry out the spirit and intent of this Act and, in addition to the other powers conferred by this Act, shall have the following powers:

1. *To develop and to amend the bylaws and the plan of service for the system subject to the approval of the State Librarian.*
2. *To have the exclusive control of the expenditure of all moneys and funds held in the name of the library system.*
3. *To make and adopt such policies, rules and regulations for the government and operation of the library system as necessary.*

¹Each library system receiving State aid is required to furnish an annual report and such information regarding its library service as the State Librarian may from time to time require. 75 ILCS 10/10 (West 2014). The State Librarian may revoke his approval of a library system if he finds that it does not conform to the plan of service or the regulations promulgated by the State Librarian. In such a case, a library system shall not thereafter be entitled to State aid until its bylaws or plan of service is again approved by the State Librarian. 75 ILCS 10/10 (West 2014).

²*See* Illinois Secretary of State Website, <https://www.cyberdriveillinois.com/departments/library/libraries/libsystems.html>.

* * *

5. *To appoint and to fix the compensation of a competent librarian, who shall have the authority to hire such other employees as may be necessary, to fix their compensation, and to remove such appointees, subject to the approval of the board.* The board may also retain counsel and professional consultants, as needed. (Emphasis added.)

The administrative rules promulgated by the Secretary of State, in his capacity as State Librarian, implement the Act by providing, in pertinent part:

d) *The board shall adopt policies and bylaws in accordance with the Illinois Library System Act and this Part and shall codify and disseminate them. The system policies and bylaws shall be written and available via the library system web site. The board shall annually review the policies and bylaws. Policies and bylaws are subject to approval by the State Librarian, as stated in Section 3030.255.*

* * *

g) *The system board shall employ an executive director, reporting to and accountable to the system board, who shall have a master's degree from an American Library Association-accredited library education program and who has a minimum of five years postgraduate employment that includes a minimum of two years of library administrative experience. The executive director shall have the authority to hire such other employees as may be necessary, to fix their compensation, and to remove those employees, subject to the approval of the board. Salaries shall be based on a board-approved written compensation plan. (Emphasis added.) 23 Ill. Adm. Code §3030.250(d), (g) (2016), added at 39 Ill. Reg. 5140, 5176-77, effective March 20, 2015.*

According to the information you have provided, in August 2014, Heartland inquired concerning the meaning of subsection 7(5) of the Act. On August 26, 2014, the director of the Illinois State Library advised Heartland that, pursuant to subsection 7(5) of the Act, any

employee hires or terminations made by the executive director, as the "competent librarian,"³ are provisional until the board of directors approves the action. The Heartland board of directors subsequently implemented a new policy whereby a list of new employees, changes in compensation, and terminated employees is prepared each month by the Heartland executive director and presented to the Heartland board of directors at its monthly board meeting for board consideration and approval.

In 2015, the State Librarian notified the board of directors of RAILS of the Illinois State Library's letter to Heartland and requested that the RAILS board adopt revisions to its bylaws and implement policies consistent with the Illinois State Library's interpretation of subsection 7(5) of the Act. According to the information you have provided, the RAILS board of directors approved the following revision of its bylaws at a meeting held on October 30, 2015:

Section B. Responsibilities of the Executive Director

3. Authority and responsibility for staff recruitment, evaluations, promotions, discipline management and terminations, as well as all other personnel matters in accordance with system policies, except that the Executive Director's authority to hire, fix the compensation, and terminate employees is subject to the approval of the RAILS Board of Directors.^[4] (Emphasis in original.) Letter from Cynthia J. Wood, Assistant General Counsel, Illinois Secretary of State, to Honorable Lisa Madigan, Illinois Attorney General (February 2, 2016), at 2-3.

Immediately after approving the revised bylaw, however, the RAILS board of directors, upon motion, adopted the following policy:

Until contrary direction is given by the RAILS Board, the Executive Director is authorized and directed to follow the same employee hiring, compensation and termination practices as

³Section 3030.250 of the administrative rules which implement the Act (23 Ill. Adm. Code §3030.250(g), (h) (2016), added at 39 Ill. Reg. 5140, effective March 20, 2015) uses the term "executive director," while section 7 of the Act uses the term "librarian." For ease of reference, we will use the term "executive director" herein.

⁴The meeting minutes indicate that the RAILS board approved the revisions to the bylaws suggested by the Illinois State Library. RAILS Board, Meeting, October 30, 2015, Minutes 4. However, the online version of the RAILS bylaws only contain revisions through July 24, 2015. RAILS Website, *available at* <https://www.railslibraries.info/about/bylaws>.

Ms. Cynthia Wood - 5

followed immediately before the bylaws amendment adopted today. (Capitalization omitted.) RAILS Board, Meeting, October 30, 2015, Minutes 4.

You have indicated that, prior to amending its bylaws, the RAILS board of directors had given the executive director advance, blanket approval of all RAILS employment decisions.

ANALYSIS

As noted above, subsection 7(5) of the Act addresses a library system's board of director's employee hiring, compensation, and termination powers, and provides:

5. To appoint and to fix the compensation of a competent librarian, who shall have the authority to hire such other employees as may be necessary, to fix their compensation, and to remove such appointees, subject to the approval of the board. The board may also retain counsel and professional consultants, as needed. (Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Illinois Department of Healthcare & Family Services v. Warner*, 227 Ill. 2d 223, 229 (2008). Legislative intent is best evidenced by the language used in the statute. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). If statutory language is clear and unambiguous, it must be given effect as written. *DeLuna*, 223 Ill. 2d at 59.

Subsection 7(5) of the Act authorizes the board of directors of a library system to appoint an executive director "who shall have the authority to hire such other employees as may be necessary, to fix their compensation, and to remove such appointees, *subject to the approval of the board.*" (Emphasis added.) Accordingly, although the executive director is authorized to hire, terminate, and fix the compensation of library system employees, such decisions are not final until approved by the board of directors. Had the General Assembly intended for the executive director to exercise unfettered control over the hiring, firing, and compensation of library system employees, it would not have included the phrase "subject to the approval of the board" in subsection 7(5). Further, to construe subsection 7(5) as authorizing the executive director's unilateral authority to act in the indicated areas would render the phrase "subject to the approval of the board" superfluous. A construction which renders a part of the statute superfluous or redundant must be avoided. *People v. Jones*, 223 Ill. 2d 569, 594 (2006).

In addition, as a general principle, a governmental body may, even absent specific authority, delegate the performance of ministerial functions to another. An official action or duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. *Johnston v. City of Chicago*, 258 Ill. 494, 498 (1913); *People v. May*, 251 Ill. 54, 57 (1911); *Wrobel v. City of Chicago*, 318 Ill. App. 3d 390, 396 (2000), quoting *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 194 (1997). In the absence of a statute so providing, however, a governmental body cannot delegate powers, authority, or functions that are quasi-judicial in character or that require the exercise of discretion or personal judgment. *Commonwealth Edison Co. v. Pollution Control Board*, 25 Ill. App. 3d 271, 279-80 (1974), *aff'd in part, rev'd in part*, 62 Ill. 2d 494 (1976); 1984 Ill. Att'y Gen. Op. 42, 44; Ill. Att'y Gen. Inf. Op. No. I-90-030, issued July 25, 1990, at 1. The essence of a discretionary power is that the person or persons exercising the power may choose which of several courses may be followed. *May*, 251 Ill. at 57; *D.M. ex rel. C.H. v. National School Bus Service, Inc.*, 305 Ill. App. 3d 735, 739 (1999); Ill. Att'y Gen. Inf. Op. No. I-90-030 at 2; Ill. Att'y Gen. Op. No. NP-1152, issued September 27, 1976, at 3.

Nothing in the Act authorizes the board of directors to delegate or abdicate its authority to approve the executive director's employment and/or compensation decisions. Additionally, the duty to approve such decisions is not absolute, certain, or imperative; it clearly requires the exercise of judgment by the board of directors, which may approve or disapprove the executive director's decision. See *Illinois Education Ass'n Local Community High School District 218 v. Board of Education of School District 218, Cook County*, 62 Ill. 2d 127, 130 (1975) (matters pertaining to hiring and firing of school personnel are discretionary functions and therefore cannot be delegated). A library system board of directors, therefore, may not delegate its authority to approve or disapprove the hiring, compensation, and termination of library system employees to the executive director.

Additionally, pursuant to subsection 7(1) of the Act (75 ILCS 10/7(1) (West 2014)), the bylaws of the board of directors of a library system are "subject to the approval of the State Librarian." According to the information you provided, the RAILS board adopted revisions to its bylaws and policies to reflect the Illinois State Library's interpretation of subsection 7(5) of the Act. However, the RAILS board then immediately adopted a motion re-delegating its employment, compensation, and termination approval authority to its executive director. This motion appears to have had the effect of reinstating the previous version of the bylaw regarding employment decisions, which is clearly inconsistent with subsection 7(5) of the Act. It has long been established that a corporation has no power to enact a bylaw inconsistent with the statute under which it was created. *King v. International Building, Loan & Investment Union*, 170 Ill. 135, 140-41 (1897). Accordingly, absent a statutory provision so providing, the RAILS board of directors does not possess the authority to delegate its approval authority over employment decisions by bylaw, motion, or otherwise to the executive director of the library system.

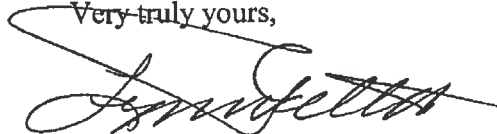
Ms. Cynthia Wood - 7

CONCLUSION

For the reasons stated above, absent express statutory authority, the board of directors of a library system may not delegate its statutory approval authority for all future hiring, compensation, and termination decisions to the executive director of the library system.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lynn E. Patton", written over a horizontal line.

LYNN E. PATTON
Senior Assistant Attorney General
Chief, Public Access and Opinions Division

LEP:ANG:lh

cc: Irene Lyons, General Counsel, Illinois Secretary of State