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Via e-mail only to etrahan@mvls.info

To: MVLS Governance Structure Review Committee

CC: Executive Director Eric Trahan; MVLS Board of Directors

From: Stephanie A Adams, Esq.

Re: Update and questions from the committee

Date: March 12, 2025

To the Governance Structure Review Committee:

I have received the below update and questions from your committee:

No change is recommended for the current bylaws statement on having 1-3 MVLS trustees from each county

Form an advisory group, ideally with 2 members from each county, to work with the MVLS Nominating Committee to identify potential candidates to serve as MVLS trustees.

The Nominating Committee, using input from the advisory body, will nominate candidates to stand for election as trustees. The committee will get candidate statements from each nominee, and will produce a ballot by August 1 for distribution to member libraries. Ballots will indicate how many seats are open, and will accommodate write-in candidates.

Each member library will have one vote in the election for MVLS trustees. Official ballots must be filled out and returned to MVLS by September 25

Results will be shared at the October MVLS Annual Meeting.

Since we have 14 member libraries, there is the possibility of a tie. How do we find a tie-breaker. Can the MVLS Board President take that prerogative?

We discussed how school district annual meetings (at which some library trustees are elected) are not actually "meetings" at all, they are timed public elections. Absentee ballots are used in these school district "annual meetings." What about a provision for early voting or voting by proxy?

The committee wants to make sure that every library has a way to cast their vote even where they might find it difficult to have a representative at the MVLS annual meeting

I will address the questions first.

QUESTION: Since we have 14 member libraries, there is the possibility of a tie. How do we find a tie-breaker. Can the MVLS Board President take that prerogative?

ANSWER: No, the MVLS Board President cannot be a tie-breaking vote; the election must be by "library trustees" and not system officers. If there is a tie during the annual vote, and a runoff



vote at the meeting does not resolve the tie, the seat is vacant and could then be filled by the board pursuant to New York State Education Law Section 226.

QUESTION: We discussed how school district annual meetings (at which some library trustees are elected) are not actually "meetings" at all, they are timed public elections. Absentee ballots are used in these school district "annual meetings."

ANSWER: School district public library elections are governed specifically by Education Law Sections 260(7) and (8), which enable election at the “annual meeting” (duly noticed election) of a school district conducted per Article 41 of the Education Law; these sections apply **only** to school district public libraries and not to other types of libraries or library systems.

The law governing cooperative library system trustee election is found in Education Law Section 255(2) and is very different (see highlighted excerpts below, with the relevant sections in blue).

To call a meeting to elect system trustees, the secretary of a cooperative library system is required to send a notice via the mail to the “last known” address of the library trustees. These requirements are built into law, and I strongly advise they be followed.

That said, after meeting those very clear requirements for announcing a trustee election, the library system has great latitude.

For example: there is NO requirement that the meeting be conducted in person.¹ Further, because it is a meeting of *library trustees* and not a meeting of *the system’s board*, it is not subject to the Open Meetings Law. While it does have to be a “meeting” (as in, a gathering), this could be done by teleconference.

QUESTION: What about a provision for early voting or voting by proxy?

ANSWER: There is no bar on proxy voting.

I will now address the updates:

UPDATE: No change is recommended for the current bylaws statement on having 1-3 MVLS trustees from each county.

ASSESSMENT AND ADVICE: This approach is allowed under the MVLS charter.

Options for change are broad, as the current charter allows for between 5 and 25 trustees and currently does not have a representational requirement (in the past, 4 were required from each county).

As the board is aware, in the past, at least one library requested the board to consider an approach that is more reflective of the proportionate fiscal and collection contributions of each of the individual 14 member libraries, and of course, there are models for that. However, it is my

¹ This is in contrast to regional library counsel annual meetings, which do have to be in person.



understanding that the governance committee has received more recent input rescinding this request, so I will not comment further.

UPDATE: The committee is considering a nomination process with an advisory committee.

ASSESSMENT AND ADVICE: This is legal and appears to be a very inclusive, orderly, and proactive way to identify a broad array of qualified nominees.

UPDATE: The committee is considering a ballot process with votes due by September 25th, and results shared at the October Annual Meeting.

ASSESSMENT AND ADVICE: I must strongly advise against this approach.

As seen in the area of the Education Law highlighted in blue, below (sub-sub-section f of sub-section 2 of Section 255), “trustees shall be elected annually by a meeting of the trustees of the participating libraries in the cooperative library system.” [Full law is below in yellow, just FYI]

Given this very clear language, I am concerned that the approach currently under consideration could be successfully challenged, which is why I must advise against it.

That said, other than the requirement that the election be held annually at a meeting to trustees of participating libraries, the use of the nominating ballots in advance is fine. As stated above, this meeting can be via teleconference, so long as the board does not lead the meeting, and no board business is conducted at it (which would trigger Open Meetings Law).

ADDITIONAL ADVICE

First, I encourage the board to consider de-coupling the annual election of trustees from the “Annual Meeting.”

An “Annual Meeting” under the not-for-profit corporation law is a board meeting to conduct System business. Systems are required to have at least six meetings a year, so the “annual meeting” can be one of them.

In contrast, the System is required to “annually elect” trustees at a meeting of library trustees. As shown above, that can be a different meeting.

In my experience, some cooperative library systems have looked to models offered by different organizations with different rules (such as regional library councils or confederated library systems) and adopted practices those organizations are required to do.

As a cooperative library system, there are some things and MVLS is required to do, but holding the “annual election” contemporaneously with an “annual meeting” is not one of them.

Second, with respect to the “1 library, 1 vote” approach:



Because individual trustees cannot make decisions for libraries, if the “1 library, 1 vote” approach is used, I advise the System be ready to clarify how each library can confirm and cast its single vote.

This can be done either by a library simply designating a trustee who is empowered to vote at the meeting or by the board voting on the ballot and directing the trustee to cast the vote per the vote of the board.

Here is a template letter the System could send to member libraries with the ballot to enable that:

Dear **MEMBER LIBRARY** BOARD:

As you know, the new trustees will be elected at a meeting of member library trustees to be held on **DATE/TIME**.

Our nominating committee and advisory group have been busy identifying qualified and willing nominees.

Below is the ballot setting out the **#** seats for a trustee term to run **DATE to DATE**, with a section to write in a name instead of selecting a nominee.

With each member library having one vote per open seat, your library can either:

1. Vote on each ballot item and designate a trustee (and an alternate) to submit the ballot at the meeting;

OR

2. Pass a resolution to simply designate a trustee to vote for the Library at the meeting (and an alternate), without voting on the ballot.

Your designated voter should be ready to sign in and submit a completed ballot at the meeting. Your library doesn't need to designate an alternate, but it is a good idea!

Here is a sample resolution for designating your representative:

BE IT RESOLVED that **NAME OF TRUSTEE** is designated to cast the votes for MVLS System Trustees at the meeting to be held on **DATE**, with **NAME OF ANOTHER TRUSTEE** designated as an alternate in the event **NAME** is unexpectedly unable to attend.



NEXT STEPS

Thank you for trusting me with your initial thoughts on how to move forward. In the event you have any questions about my advice, please let me know, and either me or paralegal Nathan Feist can attend a meeting to ensure you are getting prompt input on this important process.

From Education Law Section 255:

2. Upon the request of a majority of the members of the boards of trustees of two or more libraries chartered by the regents, if it shall appear to the satisfaction of the commissioner that the establishment of a cooperative library system will result in improved and expanded library service to the area and that the area is suitable for the establishment of such a cooperative library system, the commissioner may call a joint meeting of the trustees of such libraries for the purpose of determining whether a cooperative library system shall be established and electing a board of trustees of such cooperative library system. If it shall appear to the commissioner that the area proposed for the cooperative library system is not sufficient to warrant the establishment of such system; that such area is not otherwise suitable or that for sufficient other reason such cooperative library system as proposed should not be established he shall disapprove such request.

a. Notice of such meeting shall be given by the commissioner to each trustee by mail to his last known address at least five days prior to such meeting. At such meeting the board of trustees of each library participating shall have five votes.

b. Such meeting shall be called to order by the person designated by the commissioner and shall thereupon organize by the election of a chairman. At such meeting a resolution in substantially the following form shall be presented for the action of the meeting: "Resolved that a cooperative library system be established consisting of the following libraries chartered by the regents (name libraries) for the purpose of expanding and improving library service in the area served by the above named libraries."

c. If the resolution described above is adopted, then the meeting shall proceed to elect a board of trustees of such library system to consist of not less than five nor more than twenty-five members as determined by the meeting.

d. Within one month after taking office, the trustees-elect shall apply to the regents for a charter as a cooperative library system.



e. The board of trustees shall manage and control such cooperative library system and shall have all the powers of trustees of other educational institutions in the university as defined in this chapter. Such board shall elect a president, secretary and treasurer. Before entering upon his duties, such treasurer shall execute and file with the trustees an official undertaking in such sum and with such sureties as the board shall direct and approve. The treasurer need not be a member of such board. The funds of the cooperative library system shall be deposited in a bank or banks designated by the board of trustees and shall be expended only under the direction of such trustees upon properly authenticated vouchers.

f. The term of office of trustees shall be either three or five years except that the members of the first board of trustees shall determine by lot the year in which the term of office of each trustee shall expire so that as nearly as possible the terms of either one-third or one-fifth of the members of such board will expire annually. Thereafter, the successors of such trustees shall be elected annually by a meeting of the trustees of the participating libraries in the cooperative library system. Where the term of office of a trustee is five years, no trustee shall hold office consecutively for more than two full five year terms and where the term of office of a trustee is three years, no trustee shall hold office consecutively for more than three full three year terms. Provided further, however, years served by a trustee appointed to fill an unexpired term shall not count towards the term limit. Such meeting shall be called by the secretary of the cooperative library system who shall give notice to all the trustees of participating libraries in the manner provided in subparagraph a of this subdivision for giving notice of the meeting to authorize the establishment of such cooperative library system. Within one month after approving a change in the length of the term of office of trustees, the trustees shall apply to the regents for an amendment to the charter of the cooperative library system. Such change in the length of the term of office of trustees shall not take effect until such charter amendment is approved by the regents. Any cooperative library system that changes the length of the term of office of trustees pursuant to this paragraph, may appoint an individual for a shorter term in order to ensure that as nearly as possible, an equal number of trustees shall be elected to the board each year, with the trustees assigned such shorter terms determined by lot, and provided further that the term of office of each incumbent member of the board shall not be decreased thereby.

g. A contract may be entered into between the board of trustees of a cooperative library system and the department under which the state library will provide services, facilities and staff to the cooperative



library system upon terms agreed upon by and between the parties to such contract.

h. Nothing herein contained shall be deemed to deprive any participating library of its property.

i. The board of trustees of any library chartered by the regents which is not participating in a cooperative library system may adopt a resolution requesting that such library become a participating library in a cooperative library system. Duplicate copies of such resolution certified by the clerk of such board of trustees shall be filed with the board of trustees of the cooperative library system. If such board approve such resolution such approval shall be endorsed thereon and a copy thereof shall be filed with the commissioner. Upon such resolution being approved by the commissioner such additional library shall become a participating library in such system and shall have the same rights, duties and privileges as other libraries participating therein.

j. The participating libraries in such library system shall be those libraries, members of the boards of trustees of which join in petitioning the commissioner to call the meeting for the establishment of the cooperative library system pursuant to this section, and who are named in the resolution voted upon by such meeting and in the charter of the library system.

k. The board of trustees of each public library system shall meet no fewer than six times a year.