

KAVANAGH,
SCULLY,
SUDOW, &
WHITE
FREDERICK, P.C.
Attorneys & Counselors at Law

October 6, 2017

PHILLIP B. LENZINI
KAREN M. STUMPE
BRIAN D. MOOTY
JAMES W. SPRINGER
GARY E. SCHMIDT
BRUCE THIEMANN
ANN R. PIEPER
ROBERT C. GATES
ELIZABETH T. ARCOT
LUCAS B. YOUNG

Of Counsel

JAMES L. HAFELE
** WILLIAM C. LOEFFEL

Also licensed in

*** Missouri*

*Founded in 1883 as
Worthington & Page*

RICHARD J. KAVANAGH
(1894-1963)

RICHARD C. KAVANAGH
(1924-2010)

J. CHASE SCULLY, JR.
(1907-1969)

JOSEPH Z. SUDOW
(1914-2012)

EUGENE L. WHITE
(1917-2008)

WILLIAM McD. FREDERICK
(1907-1991)

Mr. Jonathan C. Wright
Logan County State's Attorney
Logan County Courthouse
Rm. 31
601 Broadway Street
Lincoln, Illinois 62656

RE: Our File No. 12472.11
Atlanta Public Library District

Dear Mr. Wright:

I write in reply to yours of September 29, 2017 in regards to the Library.

I'll start with a general observation caused by some of the comments in your letter, and I apologize in advance if they sound at all presumptuous, as I mean no disrespect to you or your investigation, I simply want to clarify anything I can. I understand you sent a FOIA request to the Library, which it timely responded to, and it no doubt included some of the various documents you list in your letter, and two in particular which you attached to your letter to me. I want to point out that I fear you have fallen into what I frequently see as a major "pitfall" involving FOIA. As I'm sure you know, the Library is required to comply with FOIA which is of course a major misnomer and indeed has absolutely nothing to do with "information." Instead it depends solely and completely on "records" or documents which the governmental unit has possession of, whether those records are fallacious, inaccurate, comedic, useful or useless. In fact (and in law) as I'm sure you realize, FOIA expressly states [5 ILCS 140/3.3] that the Library is NOT required to "interpret or advise requesters as to the meaning or significance" (and I'll add) the substance, accuracy, truth or veracity, completeness or inaccuracies of any of these "records" it produces in response to FOIA. And it certainly doesn't vouch for any such production.

The "pitfall" I refer to, and see frequently, is that requesters, not realizing this fact, having received from the government a "public record" often jump to a conclusion that that record has some substance or value or otherwise the unit would not have provided it. Instead, as I'm sure you know, the Library has no such choice. It is required to give you documents or records which it has within the scope of your FOIA request, even if the information contained therein is total wrong or incomplete.

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I will also say, to whatever extent it might help, that as to the Affidavit you included with your letter, and which fits within the "pitfall" I tried to describe above, I had never seen it before you sent it to me. I surely had no hand or role in its creation or apparent delivery to the Library, and as will become clear in my next paragraph, to some extent at least, question its detailed accuracy or at least its grammar and syntax. Perhaps I should also state that I do not represent William Thomas individually, and never have been his lawyer, though I have had numerous contacts with him over the years primarily in his service as a Library Board member and the Treasurer as well.

As I told your investigator in an extended phone conversation several weeks ago, as an attorney, and given the legal practices of real estate law in Illinois for the last almost 200 years now, when one is interested in determining the ownership of real estate, there is only one reliable situs for reference to such information. If I told you I was the owner of the Sears Tower in Chicago, I'm sure you would, before giving me the \$100 million dollars I might ask for it, want to check the Cook County Recorder of Deeds' records. And if their records say someone else owns that property and not I, you would not likely hand me the money and might even want to call the police. As to the property commonly called 114 SW Arch Street, Atlanta, the ownership of which you indicated was your "first effort" here, as I told your investigator, I was told that property was owned by a not-for-profit corporation called Teleologic Learning, L.L.C. At that time, I also told him that I had not independently verified that simple fact but reference to the Logan County Recorder of Deeds would, in my legal opinion, be the proper and only definitive way to determine ownership thereof. Notwithstanding repeated shouts from Watchdogs that someone else owned the property, namely Mr. Thomas, it seemed to me a rather simple, cheap (actually free) investigation there would provide the answer. When I got your letter I did indeed visit (online) the Logan County Recorder's Office and found that their records do indeed report that the owner of this property is Teleologic Learning L.L.C. by a deed numbered 200300027534, and recorded "11/20/2003" not Mr. Thomas. I presume you or he can verify the same. In my opinion, on the precise topic of current ownership of that property that is the definitive answer.

Now before turning back to the Affidavit and your comments regarding ownership, let me set forth from my perspective at least in summary form, what I have told the Library as my client on the matter, again irrespective of all of the shouting, half-truths, and inaccurate "legal conclusions or advice" from admitted non-lawyer watchdogs. Under the statute regarding "Prohibited interests in contracts" [50 ILCS 105/3 et seq.] in sub (a) no person holding office as on the library board may be financially interested directly in his own name or any other person, trust or corporation in any contract, etc. unless some exception applies. I'll skip sub b (1) and (2) the ones the watchdogs like to shout about, but perhaps their attention span wore out before they got to (b-5) the applicable one in my view. Basically (b-5) says in addition to those any library board member may provide property etc. if the contract (whether we are talking a lease or a sales



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contract I won't differentiate at this point) is with a corporation (e.g. Teleologic Learning L.L.C.) in which the board member "has less than a 1% share in the ownership." In brief the remaining provisions require approval by majority vote with the interested member abstaining, public disclosure of the interest, and abstention from voting. Now since in Illinois not-for-profit corporations have no "owners" by law, unlike for-profit corporations, obviously Mr. Thomas could have fit within this (b-5) exception if these steps were followed and that is what I basically advised my client at the time. But then as you pointed out in your letter, section 3.1 of this same statute, when the contract being considered here pertains to real estate, certain other provisions also apply. I also cited my client to these and summarized basically by saying that full disclosure under this section was necessary. I did not, in my brief sentence, indicate or include that that "full disclosure" need be in writing or under oath as the section states. I also did not suggest language or further explication of what verbiage could or should be used for the disclosure or differentiate from the layman like use of "I am the owner" from the extensive detailing of corporate structure, membership, employment, especially in the context of not-for-profits.

But again I did not draft and had never seen the Affidavit or the language used therein. Further, I did not draft and was not involved in the language of the Lease Agreement you also refer to in your letter, though I had seen that earlier this year, though not when it was executed. I realize both of these indicate in short, simple terms that William Thomas is the owner of the property, which in my view as a lawyer and knowing the Logan County records I refer t above, is simply inaccurate or not completely detailed. I don't believe the inaccuracy is intentional or at all an attempt to mislead, and indeed, in the context of disclosure of interests, that short direct statement really serves as a more full disclosure of interest, though the details may vary, that the situation or circumstances that section 3.1 was really designed to address (i.e. persons "hiding" their financial interests in a web of corporate structures and entities to mask relationships, not exaggerating them). While, I believe instead it would be more accurate (as a lawyer) to say that Mr. Thomas is an employee and CEO of a not-for-profit corporation, which is itself a member of a not-for-profit corporation that is the actual recorded owner of the subject property (and understand that I do not know the details of any of this structure, and this is entirely my conjecture at this point never having discussed it with anyone and basing it entirely on the matters stated in your letter and my legal knowledge, and the Logan County ownership records I have seen) I can also see where laymen (not lawyers) would be more likely to conclude that MY verbiage is just "beating around the bush" of what instead Mr. Thomas disclosed or simply stated as HIS ownership, even though NOT technically, legally correct or accurate.

Turning to 50 ILCS 105/3.1, I should start by saying that on one level it primarily refers to "ownership" or being "owned" (whether wholly or partially, I will ignore for these matters, as I believe unimportant here) and to that extent, since not-for-profits are not owned to begin with and have members, not "owners" application of the section requires some care. Now it is true



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that 3.1 does refer to beneficiaries having any interest and members, shareholders and limited or general partners entitled to distributable income (specifically 7 ½% or more) and the disclosure of such interests before any contract for real estate is entered into. In my view, it is that part of 3.1 that applies here, or might apply. I will also draw your attention to the very last paragraph of 3.1 dealing with entities (e.g. Teleologic Learning L.L.C. here) "owned" by another entity and those disclosures. That paragraph uses no other relationship but ownership, so of course my view is under the law that there are no entities that "own" an Illinois not-for-profit unless you want to assert that you and I as members of the general public in Illinois "own" it, as some writers generally contend. I won't pursue that view at this time except to say if that were the true ownership status of NFP's, then no disclosures as sometimes called for by 3.1 would be possible because millions of Illinoisans would be the "owners" required to disclose.

But assuming the "member language" of the opening paragraph of 3.1 is the proper focus, it would appear to me that IF St. Thomas Didymus Corporation is the sole member of Teleologic Learning L.L.C. (and I have absolutely no knowledge other than this disclosure given to the Library indicates, and also I have absolutely no knowledge of the books and records or structure of either entity other than this disclosure), then my question would be in trying to determine "total distributive income" whether anyone or anything has any distributable income from the property. I could not jump to the conclusion based on what little I know that there is. And at this point there has been no disclosure of any. Since I know nothing of either of the corporations' books and records, I can't even intelligently conclude such. For instance I was once President of the Board of the Children's Home here in Peoria, a multi-million dollar not-for-profit and employing hundreds of people. I can tell you there when we sold some valuable properties, none of our employees including the CEO there got any "distributable income" from the proceeds, and instead all of the income was plowed back into the operations, every day expenses of operation, and there weren't even any compensation adjustments of any kind. I can say there, in relation to all of the leases of property, the rental incomes was similarly used to meet the normal typical expenses of operation and no individual, and certainly that included the CEO, in any way received any of the "distributable income" let alone 7 ½% because there was no distributable income. That's not how many not-for-profits I've been involved with work.

If for some reason (other than the baseless ranting and half truths spread by dogs) you believe either the current lease of this property or an eventual sale of it to the Library would or has generated "distributable income" to Mr. Thomas, and I do not believe any regular salary or compensation in his employment would at all constitute what section 3.1 is addressing by that clause, I would certainly be interested in hearing about that. But to be clear, as far as I know at this point, and based also on all disclosures, however in artful or technically inaccurate as to "ownership" they might be (and I admit I am NOT at all familiar with the books and records of

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either corporate entity) that have been made, there is no "distributable income" which has been an entitlement or in fact made.

I am therefore a bit perplexed as to your comments regarding the Affidavit, which I speculate was an attempt to comply with the written disclosure under oath found in 3.1, whether really required or not. While I could see that section 4 isn't grammatically correct if St. Thomas Didymus is the only member of Teleologic Learning L.L.C., and William Thomas is an employee or CEO of one or the other or both, I'm not sure otherwise what you mean by an affidavit which is "fully compliant with 50 ILCS 105/3.1." For instance, and I can only use this as an example as I have said several times I am not actually informed of the accurate facts, so I am not representing this to be true, merely that it might be the case and is certainly not inconsistent with the facts I DO know at this point and the public records available to me, what if no one is "entitled" to any "distributable income" from the sale or lease of the subject property? Do you read that section 3.1 requires a written disclosure of that? Because I do not see that. I understand that IF someone, anyone, including Mr. Thomas is so entitled (especially over 7 ½% thereof) that THAT would be required to be disclosed, but I do not know that to be the case at this point. But further I do not agree with the conclusion or "preliminary opinion" you stated that "IF Mr. Thomas is entitled to receive more than 7 12% of the total distributable income...it is my preliminary opinion that it is improper for William Thomas to serve as Trustee of the library during the pendency of any votes...and any contract to purchase authorized under such conditions would be void." It seems to me that that is error because it takes section 3.1 to be something more than a disclosure statute (and it is not). Instead it is section 3 (and as I discussed above, specifically subsection b-5) that pertains to whether such contracts are void or not, and that was the basis of my advice to my client and I stand by that as no one on the Library board has an ownership interest of 1% or more, of course presuming the full disclosure and abstention is done.

Please let me know if you have any questions or wish further documentation from the Library and I will follow up promptly.

Very truly yours,

KAVANAGH, SCULLY, SUDOW,
WHITE & FREDERICK, P.C.

Phillip B. Lenzini

PBL:pbl

KKAVANAGH,
SSCULLY,
SSUDOW
VWHITE
FFREDERICK, P.C.

Attorneys & Counselors at Law

Mr. Jonathan C, Wright
Logan County State's Attorney
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Bcc: Ms. Cathy Maciariello

Ms. Cathy Maciariello, Librarian
Atlanta Public Library
100 Race Street
Atlanta, Illinois 61723-0568