



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

June 13, 2018

Randy L. Brooks, President
Atlanta Public Library District
100 Race Street, P. O. Box 568
Atlanta, IL 61723

Steven Mahrt
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202 North Prospect Road
Bloomington, IL 61704

RE: IN THE MATTER OF THE RECOVERY OF
GRANT FUNDS FROM THE ATLANTIC PUBLIC
LIBRARY DISTRICT

FILE NO. S-LH-18

Gentlemen:

Enclosed is a copy of the Findings And Recommendation Of The Hearing Officer and the Administrative Order entered this 13TH day of June, 2018 by Jesse White, Secretary of State.

Respectfully,

A handwritten signature in cursive script that reads "Rachel A. Sidener".

Rachel A Sidener
Dept of Administrative Hearings

**JESSE WHITE
SECRETARY OF STATE
STATE OF ILLINOIS**

**IN THE MATTER OF THE RECOVERY OF
GRANT FUNDS FROM THE ATLANTIC PUBLIC
LIBRARY DISTRICT**

FILE NO. S-LH-18

ORDER

WHEREAS, the Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer, **TIMOTHY J. FORMAN** in the above captioned case have been read and examined; and,

WHEREAS, the record has been reviewed; and,

WHEREAS, the Findings of Fact and Conclusions of Law are correct and are hereby adopted as the Findings of Fact and Conclusions of Law of the Secretary of State ("Secretary"); and,

WHEREAS, the rulings of the Hearing Officer on the admission of evidence and all motions were correct and are hereby concurred in by the Secretary; and,

WHEREAS, the Secretary adopts the recommendations of the Hearing Officer;

NOW THEREFORE, IT IS HEREBY ORDERED: That pursuant to the Findings of Fact, Conclusions of Law, and the Recommendations of the Hearing Officer, the Petition to contest The recovery of certain funds provided to the Atlanta Public Library through the "Live and Learn" Construction grant is hereby allowed. The Atlanta Public Library is not required to return any funds received from the State of Illinois program.

This Order is final and subject to appeal within thirty-five (35) days pursuant to the Administrative Review Law.

FINDINGS AND RECOMMENDATIONS

OF THE HEARING OFFICER

JURISDICTION

This cause comes on for hearing at the request of The Atlanta Public Library (Petitioner) on **February 6, 2018**, pursuant to 30 ILCS 705/8b and 92 Illinois Administrative Code, ("IAC") at Chapter II, §1001, *et seq.*, as amended, before **TIMOTHY J. FORMAN**, a duly appointed Hearing Officer. Petitioner, Atlanta Public Library was represented by **STEVEN MAHRT AND MATTHEW T. DiCIANNI**, of the firm **ANCEL, GLINK, DIAMOND, BUSH, DiCIANNI & KRAFTHEFER, P.C.**, 140 South Dearborn Street, Sixth Floor, Chicago, Illinois 60603. The Secretary of State ("Secretary") was represented by **MARC CHRISTOPHER LORO**.

The purpose of this hearing is to afford the Petitioner, Atlanta Public Library, the opportunity to contest the action of the Secretary of State in seeking the return of certain funds, twenty-five thousand dollars (**\$25,000.00**), paid to the Atlanta Public Library pursuant to a grant provided to the Atlanta Public Library as part of the Illinois State Library, LIVE & LEARN CONSTRUCTION GRANT (Secretary of State's Exhibit #3). The decision to seek the return of the funds was made subsequent to a review by the Office of General Counsel of certain provisions of the subject contract; specifically Section 20¹. The Petitioner carries the burden of proof here, by the preponderance of the evidence. See the rules of the Secretary of State at 92 Ill. Adm. Code, §1001.100(s), as amended.

RELIEF REQUESTED

¹ Section 20 of the subject contract provides that upon request the Petitioner was to provide copies to the Secretary of State of any and all relevant documents. In the present case, Counsel for the Secretary of State was seeking documentation of the Library's compliance with Section VII of the contract requiring the Library to provide either a deed of ownership of a building or a lease evidencing long term occupancy of same.

The Petitioner seeks the reversal of the decision of the Secretary of State to seek the refund of the \$25,000.00 paid to the Atlanta Public Library under the terms of the Illinois State Library, LIVE & LEARN CONSTRUCTION GRANT.

TESTIMONY OF WITNESSES:

William M. Thomas:

The testimony of William Thomas established that Mr. Thomas was the owner of the building that has been referred to as the Union Building, located at 114 Arch Street, Atlanta, Illinois, adjacent to the current existing library. He stated that he has used the building since 2015 and in that time has allowed the Atlanta Public Library to use the rest of the space in the building. It was Mr. Thomas' contention that the members of the Board of Directors of the Atlanta Public Library were aware of his ownership interests from the very beginning and he had not had any intention of deceiving anyone with respect to the use of the building. A member of a public watchdog group raised an issue of conflict, claiming that Mr. Thomas could not appropriately benefit from an agreement in which he had some say with respect to the agreement's execution. When the issue of conflict was raised, Mr. Thomas sought and relied upon the opinion of Mr. Lenzini, a local attorney, in deciding his next course of action. (Petitioner's Ex. #1). Mr. Thomas testified that he did what he thought was necessary to disassociate himself from the board and the lease/purchase of the building eventually going so far as to gift the building to the library and resign from the Library Board (Petitioner's Ex. #4 & 5).

Kathy Maciariello:

The testimony of Ms. Maciariello established that she has been Director of the Atlanta Public Library since 2014. As Director of the library Ms. Maciariello is responsible for the library's collection which involves assuring that the library's collection of books is kept current. Ms. Maciariello is also responsible for the coordination of the various programs that the library offers to the community. Ms. Maciariello testified that early on in the process of moving the library into the Union

Building, the Library Board of Directors was aware of the ownership of the building by Teleologic Corporation and that corporation's relationship to William Thomas. Ms. Maciariello also believed that based upon information from the library's private counsel there would be no difficulties in the library utilizing the building as long as certain guidelines were followed. Ms. Maciariello testified that based upon her interactions with Mr. Thomas, she believed that he was following the advice of Mr. Lenzini, the library's attorney, and had in fact stopped attending any board meetings. (Petitioner's Ex. #1).

FINDINGS OF FACT:

The Hearing Officer, being fully advised in the premises, finds as follows:

1. The Secretary has jurisdiction over the parties herein and the subject matter hereof, due and proper notice having been previously given as is by statute in such case made and provided.
2. The evidence, exhibits, and testimony have been offered and received from all parties, and a proper record of all proceedings has been made and preserved as required. The Hearing Officer has ruled on all motions and objections timely made and submitted. Documents offered into evidence comply with all standards specified in of 92 IAC, Part 1001, Subpart D.
3. Petitioner's Request for Hearing and the Secretary's Notice of Hearing were entered into evidence as Secretary's Exhibits #1 and #2, respectively. Attached hereto as Appendix A is a list of the exhibits proffered and accepted without objection by the parties herein.
4. On **January 9, 2015**, a grant application for the Illinois State Library Live & Learn Construction Grant (hereinafter "the grant"), was submitted by CM (Maciariello) on the behalf of the Atlanta Public Library ("APL") (Secretary of States' Ex. #1).
5. Said grant application provided, inter alia, that in addition to other requirements set forth therein, the grant application also required *Deed of Ownership or Proof of Long-Term Occupancy*" (Grant, Section VII, p.5)
6. On **December 18, 2014**, a special meeting of the APL was called to discuss what was then being referred to as the "Union Hall project". References were made to a need to move forward with the lease to apply for the SOS grant.

7. The Live and Learn grant was awarded to the APL in **April of 2015**. At the time of the awarding of the grant to the APL there was no lease in existence for the long-term use of any premises.
9. The **April 2016** Quarterly report of the APL notes "An opportunity arose for the Library to enter into a long-term (20 year) renewable lease for the property (Union Hall) instead of buying it outright..." (Secretary of States' Ex. #5)
10. The **July 2016** Quarterly report of the APL notes "An opportunity arose for the Library to enter into a long-term (20 year) renewable lease for the property (Union Hall) instead of buying it outright..." (Hearing Officer's Ex. #2, No. 5).
11. The **October 2016** Quarterly report of the APL notes "the lease has now been signed" (Hearing Officer's Ex. #2, No. 6).
12. The subject lease was one entered into with Stone Mission, LLC, a company that had been in the process of purchasing the building from William Thomas prior to Stone Mission's default on the loan terms (Hearing Officer's Ex. #2, No. 6 & 7).
13. The **January 2017** Quarterly report of the APL confirmed the execution of the long-term lease but also indicated that the Library Trustees were planning to revisit the issue of purchasing the building especially since the lease signed had been signed with Stone Mission, LLC., a company then in the process of defaulting on the terms of its purchase of the property contract for deed from William Thomas (Hearing Officer's Ex. #2, No. 7). Following the default on the part of Stone Mission, ownership of the property reverted to William Thomas.
14. The **October 2017** Quarterly report of the APL states that Mr. Thomas is donating the building to the APL (Hearing Officer's Ex. #2, No. 10).
15. On **November 16, 2017**, the board of the APL was presented with a "gift deed" of the subject building from William Thomas (Hearing Officer's Ex. #2, No. 14, Exhibits A and B thereto).
16. An **October 23, 2017** correspondence from Ms. Amy Williams, Associate General Counsel for the Secretary of State to President Brooks provided the Notice necessary pursuant to 30 ILCS 705/8 that the previously paid funds must be returned within ninety (90) days (Petitioner's Ex. #3).
17. Upon learning of its probable breach, the board of Directors moved in a timely fashion to cure the alleged breach.

STATUTES AND RULES APPLICABLE:

The authority sections relied upon herein are 50 ILCS 105 *et. seq.*, 30 ILCS 705 *et seq.* and 92 Illinois Administrative Code, ("IAC") §1001, *et seq.*, as amended

CONCLUSIONS OF LAW:

1. Article 4 of the grant agreement prohibits expenditures contrary to applicable state laws or regulations.
2. Article 12 of the grant requires strict adherence to all laws of the State of Illinois, including the Public Officer Prohibited Activities Act, 50 ILCS 105.
3. The Prohibited Activities Act prohibits elected or appointed persons from having a financial interest in any contract or performance of any work on which they may be required to act or vote. The Act renders any such contract, performance, or work void.
4. William Thomas' financial interest in the building leased and contracted for during the term of the grant constituted a breach of the terms of the grant application.
5. The breach of contract on the part of the Board of Directors of the Atlanta Public Library was not a breach material to the intent or purpose of the contract.
6. The establishment of an ownership in a piece of property or a long term lease was not a condition precedent to the awarding of the grant.
6. The Hearing Officer finds that the testimony of the witnesses was credible.
7. It is the grantee's burden of proof under 30 ILCS 705/8(c) (1) to prove that recovery should not be granted.
8. The grantee, Atlanta Public Library, has met its burden of proof.
9. The Secretary of State provided Notice pursuant to 30 ILCS 705 as required.

DISCUSSION

The Secretary of State's initial position as set forth in Secretary of State's Exhibit #12 was that the contract for deed between the Library and Mr. Thomas for the purchase of the

subject building was void *ab initio*. If such was the case, it is no longer, due to the gifting of the building by Mr. Thomas to the Library. Secondly, the State asserts that the terms of the grant required the Library to have a valid legal interest in the property to be improved at the time of the grant application. Such assertion is incorrect for nowhere in the *grant project agreement* is any requirement set forth regarding the ownership or leasing of the subject property to be improved. The grant application however (SOS Ex.#3, p.5), under **Section VII, Required Supporting Information, Accessibility**, states clearly that for both purposes of accessibility and new construction/remodeling that **Deed of Ownership or Proof of Long term Occupancy** is required. The Library's response to the requirement is set forth in **Attachment B Section IV: Project Design**, wherein the Library sets forth its *Desired Strategic Outcome* (emphasis added). The fact that the Library set forth a desired outcome does not mean that either the Library or the Secretary should not have contemplated changes/additions along the way to fruition. There is neither a guarantee that what is set forth will actually come to fruition nor is there any requirement that what is set forth does happen. If the State had wanted to complain, it should have complained at the time that the grant application was reviewed. Further, even a subsequent assertion or judicial finding that a member of the Library's Board had violated the Public Officer Prohibited Activities Act (POPPA), such would only serve to void the grant application. Given the acceptance of the grant by the State and the issuance of the funds, on which the Library no doubt relied, the issue of the voidability of the grant application becomes moot. Additionally, the requirement set forth above under the two cited provisions is a requirement for the completion of the grant application, not a condition precedent to the letting of any subsequent contract. Had the State set forth the requirement in the body of the grant project agreement, a different result might ensue.

Even given the foregoing however, The Secretary of State urges upon this Hearing Officer two separate approaches to seeking the return of the money granted to the Atlanta Public Library. The first approach is the contract was void *ab initio* because the Board members of the APL failed to comply with that provision of the grant application which required the library to demonstrate that it had procured a long term residence, so to speak. This issue has been addressed above.

The second approach by the Secretary of State involves the application of the Public Officer Prohibited Activities Act wherein any individual holding a public office may not be involved in the contracting or letting to contract in any matter involving which he or she may have any interest, or over which he or she may be able to exert influence. In the instant matter, that would be Mr. William Thomas who remained a Trustee of the Atlanta Public Library Board of Trustees until his resignation in January of 2018. Again, the Secretary of State asserted that the contract for deed was void but that issue was mooted by the gift of the building to the library by Mr. Thomas.

That is not to say however, that this matter is not problematic. On its face it would appear that even though Mr. Thomas did abstain from two votes regarding the disposition of the property, undoubtedly he was aware that as a member of the Library's Board of Trustees, he should not have allowed himself to be placed in a position where as a result of appearances, the question could be raised regarding his influence on the Board's deliberations. While Mr. Thomas did seek the advice of an attorney regarding his involvement in the matter, common sense would dictate that where public perception is problematic, one should step away from any situation in which it might be argued that one was involved in a matter which could influence their bottom line. Mr. Thomas is not an unsophisticated businessman, but quite the opposite. The Secretary of State, in its closing brief presses the argument based upon certain cases cited, that the *mere possibility of involvement* in the financial aspects of the grant or the use of its funds on the part of Mr. Thomas should void the agreement ab initio. Without more, this Hearing Officer cannot find that Mr. Thomas violated the Public Officer Prohibited Activities Act.

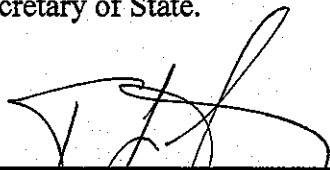
The Atlanta Board presses upon this Hearing Officer its belief that where, as here, two parties are in the process of fashioning a contract, that modification of the contract is appropriate in order to bring about the desired result, in this case, that being a facility in Atlanta, Illinois, open to its patrons for use as a library and meeting hall. This Hearing Officer finds that the Atlanta Public Library has the better argument and further finds that they Library should not be required to return the funds previously awarded the Library in pursuit of its community goal.

On the other hand, Counsel for the Atlanta public Library urges this Hearing Officer to consider this matter to be one where promissory estoppel should apply. This Hearing Officer

disagrees. What is persuasive however is the notion discussed by Counsel regarding breach of contract. Counsel cites *Montgomery Elevator Co. v. State of Ill.* 32 Ill. Ct. Cl. 75 (1977) for the proposition that rescission of a contract should not be granted unless the breach complained of was "total, substantial and fundamental, and defeats the object of the contract." Applying that standard to the present matter, the breach complained of was not insignificant in the sense that the Library had started putting grant money into a building before it had secured a contract of purchase, or at least a lease. This is similar to improving an apartment before one even moves in. Therefore, this Hearing Officer does not find that this is a matter involving promissory estoppel.

RECOMMENDATION

It is the recommendation of this Hearing Officer that the Atlanta Public Library not be required to return the funds previously granted to it by the Secretary of State.



TIMOTHY J. FORMAN
HEARING OFFICER

LIST OF EXHIBITS
Re: Matter of Atlanta Public Library
FILE NO. S-LH-18

Petitioner's Exhibits

1. **October 27, 2016** email from Phillip Lenzini to William Thomas.
2. Affidavit of William Michael Thomas.
3. ~~October 23, 2017~~ correspondence to Randy Brooks, President, Atlanta Public Library, from Amy N. Williams, Office of General Counsel.
4. **November 16, 2017** correspondence to Atlanta Public Library District from William M. Thomas and Christine S. Thomas, accompanied by "Gift Deed" for the Union Hall Building located at 114 SW Arch Street, Atlanta, Illinois.
5. **January 31, 2018** Letter of Resignation to Atlanta Public Library Board of Trustees from Bill Thomas.
6. **October 6, 2017** correspondence to Jonathan C. Wright, Logan County State's Attorney from Phillip B. Lenzini, KAVANAGH, SCULLY, SUDOW, WHITE & FREDERICK, P.C.
7. **December 8, 2017** correspondence to Steven Mahrt from Amy N. Williams, Office of General Counsel.

Secretary of State's Exhibits

1. (Undated but received on **November 9, 2017**), Correspondence from Randy L. Brooks, President of Atlanta Public Library District to Amy N. Williams, Office of General Counsel, requesting hearing.
2. Notice of Hearing, dated **January 12, 2018**.
3. Illinois Library Live & Learn Construction Grant Application
4. Minutes of the **December 18, 2014**, Special Meeting of the Library Board of Trustees, submitted by Karen Horn, Secretary.
5. Group Exhibit: Narrative Reports for Project #15-SCP-320, for **April 2016, July, 2016, October 2016, and January 2017**.
6. **October 27, 2016** email from Phillip Lenzini to William Thomas.

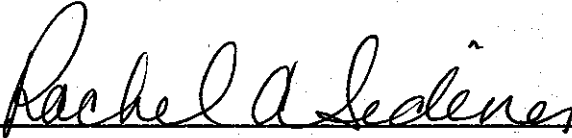
7. **September 18, 2017** correspondence to Randy L. Brooks, President, Atlanta Public Library from Amy N. Williams, Office of General Counsel.
8. **September 25, 2017**, correspondence from Randy Brooks, President, Atlanta Public Library to Amy N. Williams, Office of General Counsel.
9. **October 12, 2017** Meeting Minutes of the Board of Trustees of the Atlanta Public Library submitted by Karen Horn, Secretary.
10. **October 23, 2017** correspondence to Randy Brooks, President, Atlanta Public Library, from Amy N. Williams, Office of General Counsel.
11. **November 16, 2017** Meeting Minutes of the Board of Trustees of the Atlanta Public Library submitted by Karen Horn, Secretary.
12. **December 8, 2017** correspondence from Amy N. Williams, Office of General Counsel to Mr. Steven Mahrt, Counsel for Atlanta Public Library.
13. Atlanta Public Library, Live and Learn Grant Application, Facilities Plan-Elevation.

Hearing Officer's Exhibits

1. Illinois State Library LIVE & LEARN CONTRUCTION GRANT PROJECT AGREEMENT (unsigned)
2. Secretary of States' Motion for Admission of Facts, dated **January 30, 2018**.
3. Petitioner's Response to Secretary of States' Motion for Admission of Facts,
4. Secretary of States' Motion for Bill of Particulars, dated **January 30, 2018**.
5. Petitioner's Response to Secretary of States' Motion for Bill of Particulars
6. Atlanta Public Library's Closing Brief
7. Secretary of State's Motion to Reconvene
8. Secretary of State's Closing Brief in Reply

CERTIFICATE OF MAILING

The undersigned, an employee of the Secretary of State, of the State of Illinois, hereby certifies that on the 13th day of June, A.D., 2018, I deposited in the United States Mail at the Capitol Post Office, Springfield, Illinois, a true and correct copy of the foregoing Order, Findings And Recommendations Of The Hearing Officer, in a sealed envelope with postage prepaid, addressed to each of the below named persons at his/her address as shown by the records of the Office of the Secretary of State, pursuant to Section 2-114, Illinois Vehicle Code.



Employee, Office of the Secretary of State

Mailed certified to:

Randy L. Brooks, President
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202 North Prospect Road
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Cc:

T. Forman
A. Williams
M. Loro