



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

ILLINOIS STATE LIBRARY
Gwendolyn Brooks Building
300 South Second Street
Springfield, Illinois 62701

MEMORANDUM

TO: Illinois Library System Presidents

FROM: Anne Craig, Director
Illinois State Library

DATE: July 19, 2010

SUBJECT: Responses to Questions Received About Restructuring Library Systems

Over the past few weeks, several questions have arisen from library systems regarding the restructuring of these organizations, the disposition of real and personal property, and public records that are held by each of these entities. Specifically, I have received written questions from staff and board members of the Alliance, DuPage, Prairie Area, and Shawnee Library Systems. My staff and I have also received many inquiries by phone and in-person, at work and during various meetings.

A general review of the law and administrative rules that govern these topics is appropriate and especially pertinent in light of the fact that many staff are leaving library system employment. I write to you today to ask that you take time in your board meeting to thoroughly discuss the following information; further, I ask that you send any questions to me for consideration and response by Secretary of State legal counsel.

Restructuring/Liquidation and Merger

The statutes and administrative rules that govern the restructuring processes (liquidation and merger) clearly define the courses of action that are to be taken when the board of directors of a regional library system formally votes in favor of a restructuring process. The initial course of action that needs to be taken is a formal decision by the board of directors to cause liquidation of the existing library system and to file an application with the Secretary of State/Illinois State Library that clearly defines the liquidation process that is proposed (75 ILCS 10/13).

If the library system board is formally advocating a merger process, that restructuring can take one of two forms. A library system could merge, in part (territory and population), into two or more adjoining library systems, or could merge entirely with other adjoining library systems to form a single new library system organization. Both of these processes are described in the Merger section of the *Illinois Administrative Code* and is found at 23 IL ADC 3030.85. A merger of a library system, in part, into two or more adjoining library systems, requires at least a two-thirds vote of member libraries in support of this restructuring.

Intergovernmental Agreements

Further, it is our recommendation that, once formal merger processes are undertaken, each of you seek intergovernmental agreements between library system entities that specify all roles and expectations during the merger and transitional period. At the point the new library system organization(s) is formed and approved by the Secretary of State/Illinois State Library, these intergovernmental agreements would expire and all functions would be governed by the new entity.

Real and Personal Property

The Powers of Boards section of the Illinois Library System Act (75 ILCS 10/7 (11)) is quite clear that title and ownership, and, therefore, responsibility to safeguard and maintain an inventory of all real and personal property at each library system facility, rests with the board of directors. This provision has been a component of the Illinois Library System Act since the original legislation was crafted and adopted in 1965-1967.

The Disposal of Property section of the Illinois Library System Act (75 ILCS 10/16) identifies procedures that a library system shall take in relation to the disposal of real and personal property at any time including prior to any formal board decision regarding liquidation or merger. Should a decision be made by the board of directors to formally liquidate a library system, again, the Act contains a Liquidation section (75 ILCS 10/13) that also requires interaction with this office prior to any final disposition of personal and real property. There are further administrative rules that govern the liquidation process that can be found within the *Illinois Administrative Code* at 23 IL ADC 3030.80.

In the event that the boards of directors of two or more library systems decide to formally merge, the Merger section of the *Illinois Administrative Code* is found at 23 IL ADC 3030.85. Again, interaction with this office is required prior to any final disposition of personal and real property.

Records and Email

The papers and documentation of the library systems regarding the transaction of public business are subject to governance within the Local Records Act (50 ILCS 205). This Act further delineates courses of action that are necessary regarding the disposition of those records. All staff who are departing employment should be made aware of these provisions as they clean out their personal office space. Care should also be taken to preserve all emails that would be classified as records under the Illinois Local Records Act as well as any spreadsheets, word processing documents, and databases. The Secretary of State's Illinois State Archives Department can assist each of the library systems with questions and any interaction that may be required with local records commissions. You may contact Sheila Cowles at (217) 782-1080 to arrange for a local records officer to visit your library system.

Specific questions submitted to the Illinois State Library

1. Is [Section 3030.85 Merger](#) of the *Illinois Administrative Rules* the only language that applies to system mergers? If yes, it appears no member vote is required. If not, what other law/rules apply?

Yes, 23 IL ADC 3030.85 is the reference for merger. If two or more systems are merging, in whole; then members are not required to vote. Other law and rule that apply include the sections about liquidation and disposal of property, the Records Act, and the Open Meetings Act (see citations below).

2. The merger process will incur a number of costs including negotiation facilitator, attorney(ies), and accountant(s). Since some of these cost will be shared, is a RFP/public bid process required if a system's share of cost is under \$20,000? As an example, if 3 systems hire a negotiation facilitator at \$30,000, since each system will pay \$10,000 each, is a RFP/public bid process required since each system is only spending \$10,000 each?

In short, the answer is yes. The Governmental Joint Purchasing Act (30 ILCS 525/) requires that public entities created by statute (library systems are) and that wish to make joint purchases of personal property, supplies and services be based on competitive, sealed bids. There is no minimum threshold purchase amount identified in this Act.

3. Can merger negotiations be conducted using Web conferencing and still fall under the Open Meetings Act?

The following library systems are in excess of 4,500 square miles:

Alliance Library System
Prairie Area Library System
Lewis & Clark Library System
Lincoln Trail Libraries System
Rolling Prairie Library System
Shawnee Library System

Therefore, according to (5 ILCS 120/7 (d)) they could meet by “other means.”

Reference Information

- Illinois Library Systems Admin Rules 23 IL ADC 3030
 - <http://www.ilga.gov/commission/jcar/admincode/023/02303030sections.html>
- Illinois Library System Act 75 ILCS 10
 - <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=991&ChapAct=75%26nbsp%3BILCS%26nbsp%3B10%2F&ChapterID=16&ChapterName=LIBRARIES&ActName=Illinois+Library+System+Act%2E>
- Liquidation
 - 75 ILCS 10/13
 - 23 IL ADC 3030.80
- Merger
 - 23 IL ADC 3030.85
- Adjustments in boundaries
 - 75 ILCS 10/14.5
 - 23 IL ADC 3030.120
- Disposal of property
 - 75 ILCS 10/16
- Plans of Services of a Library System
 - 23 IL ADC 3030.65
- Illinois Local Government Records Act
 - <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=699&ChapAct=50%26nbsp%3BILCS%26nbsp%3B205%2F&ChapterID=11&ChapterName=LOCAL+GOVERNMENT&ActName=Local+Records+Act%2E>
- Illinois Open Meetings Act
 - <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=84&ChapterID=2>

In the event you have any questions; do not hesitate to contact our office.

AC/l dg/sg

cc: Illinois Library System Directors
Cindy Wood, Secretary of State Legal Counsel
ISL Managers and Consultants