

May 8, 2025

BY ELECTRONIC MAIL ONLY

Preesident Tramondozzi and
Members of the Board of Trustees of the Malden Public Library
36 Salem Street
Malden, MA 02148

Re: Ex Officio Trustees

President Tramondozzi and Hon. Members of the Board of Trustees:

You have requested an opinion regarding the voting status of the *ex officio* Trustees. By way of background, it is our understanding that the City Solicitor, at the request of the City Council President, gave an opinion that the Mayor and the City Council President have voting authority as *ex officio* members of the Board of Trustees based upon an interpretation of Chapter 146 of the Acts of 1885 (the "Act"), Chapter 550 of the Acts of 1955, and the Oxford Languages Dictionary definition. The Trustees have provided information, however, that in the 140 or so years that the Trustees have been in existence, the Mayor and City Council President have not been involved with the Board of Trustees but for occasional ceremonial purposes. Review of over 30 years of Board minutes, and the Board President's personal experience over several decades as a Board member, confirms that the *ex officio* members have never voted in Board matters and have not taken an active role on the Board. The Board also has significant fiduciary duties to protect the Converse Trust and the Library's real estate holdings, funds, and its treasured art collections. The Board has taken the position for some time that it is an independent private non-profit entity, not subject to oversight or control of the City.

In our opinion, given the status of the Board as a corporate entity, the voting status of members of the Trustees is not a City issue, and instead is an issue for the Board of Trustees to determine. The City Solicitor's opinion, based upon the language of the Act and on the dictionary definition, is reasonable and may be accorded appropriate weight. However, in light of over 140 years of past practice and the Board's status as an entity separate and apart from the City, there is equal support for the Board of Trustees' interpretation of Chapter 146.

As you know, the Act initially established the Trustees of the Malden Public Library. The Trustees are a self-perpetuating board established to maintain a free public library for the residents of the City and serve as a fiduciary to effectuate applicable portions of the will of Elisha Converse. The assets of the Library include real estate, funds, and an art collection valued in excess of \$4,000,000. Consistent with the will, and its fiduciary duties thereunder, the Trustees oversee a wide range of cultural, artistic, and literary programs, undertake private fundraising, and are curators of the extensive art collection on exhibit in the Ryder Gallery, located in the historic Converse Memorial Building.

In 1885, when the Trustees were first established pursuant to the Act, the Board was to consist of "the mayor, the chairman of the board of alderman, and the president of the common council of the city of Malden, for the time being, who shall be members *ex officiis*, and nine other citizens of Malden, who shall constitute a board of trustees and whose terms of office shall be as follows: -- the Members *ex officiis* for the terms of their respective offices, and the remaining trustees for the terms for which they may be elected." Act, § 3. The City Council President has been appointed to serve as an *ex officio* member of the Board, in addition to the Mayor

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(these entities replaced the Board of Aldermen and the Common Council). The Library Director has reviewed the Board's meeting minutes dating back 30 years, and confirmed that there is no official record showing that an *ex officio* member voted at a Board meeting. I further understand that the Mayor, who serves as an *ex officio* member of the Board, has never voted in the past decade or so of Board proceedings. Finally, I have been informed that *ex officio* members have not been counted toward the Board's quorum requirements for voting or other purposes. I note further that the City of Malden does not list either of the two *ex officio* members as official Trustees on its website.¹

There is very little case law in Massachusetts interpreting the term "ex officio," which means, by virtue of holding another office. In our experience with governmental bodies, many have boards with *ex officio* members who do not vote or participate as ordinary members; some municipalities have *ex officio* members who do vote. One case, DiBenedetto v. Commonwealth, 398 Mass. 395, 396 (1986), references in passing the member being "an ex officio, nonvoting member of the committee [emphasis added]." Ultimately, however, where the Act does not specify either way whether the *ex officio* members may vote, the question implicates principles of statutory interpretation.

Established principles of statutory construction require that a provision of law must be interpreted in accordance with its plain meaning, and "according to the intent of [the entity responsible for its promulgation] ascertained from all of its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp., 418 Mass. 737, 744-745 (1994) (citations omitted). Established principles of statutory construction require further that reviewing courts accord deference to administrative interpretations of statute. See, e.g., Flemings v. Contributory Retirement Appeal Board, 431 Mass. 374, 375 (2000) (where agency's interpretation is reasonable, court should not supplant it with its own); Case of Gately, 415 Mass. 397, 399 (1993) (interpretation of statute by entity charged with primary responsibility for administering "it is entitled to substantial deference") Berrios v. Department of Pub. Welfare, 411 Mass. 587, 595 (1992) (same). Applying such case law to the instant circumstances, as the Board has historically acted with the understanding that the *ex officio* members do not enjoy voting rights, it lends weight to the position taken by the Trustees. However, the City Solicitor's opinion, relying upon the plain language of the Act, is itself entitled to careful consideration.

In summary, I understand that the City Council President sought an opinion from the City Solicitor, who opined that, because the Act does not differentiate between voting and non-voting trustees or create any other classes of trustees, the *ex officio* members may enjoy "the same rights and privileges" as the rest of the Board. As noted, this is one reasonable interpretation of the statute. I understand, however, that the Board's interpretation, consistent with decades of precedent interpreting its enabling legislation and consistent with its fiduciary duties under the Converse Trust and status as a separate entity from the City, is that *ex officio* members have never voted or been counted for quorum purposes, as have the rest of the Trustees. In my opinion, this is also a reasonable interpretation of the statute, consistent with the Board's historical practice.

In this case, two reasonable though divergent interpretations have been provided which are each entitled to consideration. In my opinion, however, as this is not a City matter, the Board is entitled to decide how to interpret and implement its own governing act.

¹ See City of Malden, Library Trustees, available online at <https://www.cityofmalden.org/454/Library-Trustees>.

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In the event of a dispute in interpretation between parties, a reviewing Court would have the last word, in my opinion.

Please contact us with any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Lauren F. Goldberg".

Lauren F. Goldberg

A handwritten signature in blue ink, appearing to read "Devan C. Braun".

Devan C. Braun