



Office of the City Attorney

Michael R. Haas, City Attorney

Patricia A. Lauten, Deputy City Attorney

ASSISTANT CITY ATTORNEYS

Roger A. Allen
Steven C. Brist
Be'Jan G. Edmonds
Lara M. Mainella
Amber R. McReynolds
Marcia A. Paulsen
Adriana M. Peguero

Kevin B. Ramakrishna
Kate M. Smith
Jaime L. Staffaroni
John W. Strange
Doran E. Viste
Brittany A. Wilson
Jennifer A. Zilavy

City-County Building, Room 401
210 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703-3345

(Telephone) 608-266-4511
(Fax) 608-267-8715
attorney@cityofmadison.com

LITIGATION ASSISTANT
Patricia V. Gehler

MEMORANDUM

TO: Greg Mickells
Library Director

FROM: Michael Haas
City Attorney

DATE: July 7, 2020

RE: Budget Recommendation Motion and President's Right to Vote

This memorandum summarizes our conversations regarding last Thursday's Library Board meeting and the 2021 Operating Budget Recommendation agenda item. It is my understanding that the Board considered an alternative known as Option C and held a vote on the proposal. Four Board members voted in favor of Option C and three voted against it. Apparently the President of the Board was advised that she could not vote pursuant to Robert's Rules of Order and City ordinances. It is also my understanding that, if permitted to vote, the President would have voted in opposition so that the motion to adopt Option C would have failed.

In short, because the Board President is permitted to vote upon any motion, she should have been permitted to vote on the motion to adopt Option C. Denying any member the right to vote when doing so would affect the result renders the outcome of the vote null and void. If the President wishes to vote "No" on Option C, or wishes to vote on any budget recommendation option, the Board should reconvene and take up the matter again at the point just prior to the vote on Option C.

The rules of parliamentary procedures for the Library Board are established through City ordinances and the Board's Bylaws. MGO Section 33.01(9)(c) states:

Unless authorized by the rules adopted under subdivision (b) above, the chair of a Sub-unit shall not vote unless the chair's vote would affect the outcome of the matter before the Sub-unit and shall not participate in making motions or discussion thereon.

Subsection 33.01(9)(b) allows the Board to adopt its own rules of procedures for its meetings. The Library Board has done this by adopting Bylaws. Article IV, Section 14 of the Bylaws states:

Section 14. Parliamentary Authority. The rules contained in *Robert's Rules of Order*, latest revised edition shall govern the parliamentary procedure of the meetings, in all cases in which they are not inconsistent with these bylaws and any statutes applicable to this Board.

Also, Article 3, Section 2 of the Bylaws states that "The President may vote upon and may move or second a proposal before the Board."

To the extent there is any conflict between Robert's Rules of Order and the Board's Bylaws, this provision governs and the President is entitled to vote on any proposal, not just in the case of a tie or when the vote would create a tie and result in the question failing to be adopted. While this is a modification from the rule under the City ordinance, it is consistent with Robert's Rules which state that the chair of a body should protect their impartiality by exercising their right to vote only when it would affect the outcome, but this is not the rule for small boards where there are not more than a dozen members. In small bodies, Robert's Rules permits the chair to vote on all questions. See RRNR (11th ed.), p. 487, l. 25 – p. 488, l. 20.

Having determined that the President should have been permitted to vote, we now address the consequences and remedy. If the President chose on her own volition not to vote or that she would have voted with to approve the motion, then the result would stand and the motion to adopt Option C would have passed. You have indicated, however, that the President wished to vote in opposition to the motion but was advised and convinced that she could not.

Under these circumstances, it is our opinion that the Board President was effectively denied the right to vote on a question on which she was entitled to vote. Robert's Rules states that when a member has been denied the right to vote and there is any possibility that the member's vote would have affected the outcome, the result of the vote must be declared invalid. See RRNR (11th ed.), p. 252, ll. 19-27. Also, because a null and void motion is as if it never occurred, no motion to reconsider is required or proper for the Board to resume consideration of the item.

As we have discussed, if the Board President wished to vote in the negative on Option C, a new Board meeting should be held after proper notice and the meeting should resume as it was prior to the vote on Option C. After any additional discussion the vote may proceed, the motion may be withdrawn by the maker of the motion with the consent of the member who seconded the motion, or other appropriate motions may be considered, such as a motion to table. If Option C is disposed of without being adopted, the Board is free to consider and adopt any other motion related to its budget recommendation, whether or not the proposal was considered at last week's meeting, assuming that the agenda item is listed the same in order to comply with the Open Meetings Law. If any other action were taken as a result of Option C being apparently adopted last Thursday, those actions should also be taken up again and listed on the meeting agenda.

July 7, 2020

Page 3

Finally, MGO Section 33.01(9)(d) requires all City sub-units to include a public comment section at the beginning of each meeting. Because a new meeting would be a continuation of last week's meeting and would pick up at the point Option C was being considered and after public comment had already been received, the Board is not required to reserve time for public comment again. In fact, public comment should be allowed again only if the agenda lists it as an option and the Board suspend the rules to accept additional public comment.

I hope this information is helpful. Assistant City Attorney Steve Brist will be available to attend the Library Board meeting Thursday meeting and answer any questions regarding this guidance or Board procedures. Please feel free to contact me or Attorney Brist if you have any other questions.