

**TRUSTEES OF FORBES LIBRARY**  
**Executive Session Meeting of March 17, 2016**

**Present:** Mr. Carrier, Ms. Downing, Ms. Hess, Mr. Morin, Ms. Moulding, Ms. Reall, Ms. Sheirer, Mr. Twarog, Ms. Wight.

**Legal Matter: Executive Session**

At 5:15 PM, Mr. Twarog moved that the Trustees go into executive session to discuss a legal matter. Ms. Hess seconded the motion, which was passed unanimously, with Mr. Carrier, Ms. Hess, Ms. Reall, Mr. Twarog, and Ms. Wight all voting in favor. The Trustees invited Ms. Downing, Ms. Moulding, Mr. Morin, and Ms. Sheirer to remain as guests at the executive session. Ms. Enz, Ms. Smith, and Mr. Petcen left the meeting at 5:15 PM. Mr. Carrier, Ms. Downing, Ms. Hess, Mr. Morin, Ms. Moulding, Ms. Reall, Ms. Sheirer, Mr. Twarog, and Ms. Wight were present during the executive session. No votes were taken during the executive session.

The Trustees discussed the memo dated January 28, 2016 from City Solicitor Alan Seewald stating his opinion on the status of the Library with regard to its ownership, care, and control, including the City of Northampton's obligations. The opinion states that "the Trustees hold the real estate as public property in trust for the City of Northampton," and that "the same analysis applies with regard to personal property." Mr. Seewald also states that the obligations of the City include "the appropriation of funds for the management and expenses of operation of the Library and keeping it in good repair," and that in his opinion, "the Library functions as a department of the City." He states "it is the Mayor who sets policy as to the manner in which maintenance and repair of the Library shall take place." Mr. Seewald's opinion also states that the Trustees, as a public body are subject to the Open Meeting Law, Public Records Law, and the Conflict of Interest Law, and that "as a public body in control of a public building, the Trustees must comply with the various procurement laws that control how goods and services are obtained." Subsequently, the City has begun to act on this opinion by listing the library's window replacement project as being in the purview of Central Services in the City of Northampton Capital Plan FY17-FY21.

Mr. Carrier said that the question of the ownership of the Library and its property is one of the most important issues ever facing the Trustees with implications for future governance and control. The Trustees requested and received an opinion on the matter from Attorney Sandra E. Lucentini stating that 1) "the City has no direct ownership interest in Forbes Library or its property," 2) "management of the Library is presently vested entirely in the Board of Trustees," 3) "the Trustees may hold and dispose of Library property without the City's approval," and 4) "the Library is not a 'public entity' for purposes of the Open Meeting Law or the Public Records Law." In addition, the Trustees received a ruling in 2007 from the Northwestern District Attorney's Office that the characteristics of the Board render it outside the jurisdiction of the Open Meeting Law, G.L. c.39, 23A. However, the Trustees voted in 2007 to voluntarily follow the laws and have always acted in compliance with them.

In addition, Mr. Carrier received an email from the Mayor with an update on the city's "Library Trust" account in the amount of \$100,000, stating that these funds were left over from the renovation of the former library space in Memorial Hall in the mid-1980s, and do not belong to Forbes Library. The

Trustees discussed this determination and said they would like to see some documentation.

The Trustees discussed their response to the memorandum from the City Solicitor and its implications for the library going forward. Ms. Reall stated that it is her strong opinion that the Forbes Library Trustees are an independent institution and that the building and grounds belong to Forbes. The Trustees discussed options on how to proceed and whether to keep the matter private or to go public with it. Ms. Reall suggested sending a letter to the Mayor saying that the Trustees have received independent legal advice that does not support the City Solicitor's conclusions, and that the Trustees are prepared to take the matter to Probate Court to have it decided definitively now and for future generations of Trustees. The Trustees agreed by consensus that they need to fight the City Solicitor's opinion and retain control of the Library building and grounds. Ms. Wight said she was in favor of fighting the opinion, as long as the library continued to abide by the open meeting laws. Ms. Reall suggested that the Trustees spend more time reading through the documents and opinions in question and discuss them again in executive session. The Trustees discussed whether or not to continue to extend the invitation to the City Solicitor and Mayor to attend the April Trustees' meeting, and agreed that it was premature until they've developed a strategy for a response. They discussed asking Attorney Lucentini to come to the April meeting instead.

At 6:15 PM, Ms. Hess moved that the executive session be ended and the regular meeting reconvened. Ms. Wight seconded the motion, which was passed unanimously, with Mr. Carrier, Ms. Hess, Ms. Reall, Mr. Twarog, and Ms. Wight all voting in favor.