**Explanation: This letter applies to Friends anywhere when it comes to understanding how Friends’ nonprofit is separate and apart from any library they serve.**

**Legal Opinion of Status of the Friends of the Goodnow Library**

February 02, 2021

To the Board of Directors of the Friends of the Goodnow Library, Inc.:

This letter provides a legal opinion regarding the independent status of the Friends of the Goodnow Library, Inc. (the “Friends”) under relevant law, both generally and, specifically, in its relationship to the Goodnow Library (the “Library”), the public library of the town of Sudbury, Massachusetts.  The letter also addresses certain points made in a letter dated January 20, 2021 (the “January 20 letter”), from the Library Board of Trustees (the “Trustees”) to Alice Levine, President of the Friends.

**Corporate Status; Fiduciary Duties of Directors and Officers**
The Friends was incorporated in 1988 as a nonprofit corporation under Mass. Gen. Laws Chapter 180, the primary statute governing nonprofit corporations in Massachusetts.  As a nonprofit corporation, the Friends has an independent legal existence with all the rights and powers afforded to a corporation by law and provided for under the Friends’ Articles of Organization.  The Friends is not a subsidiary of, or under the control of, any corporation, government instrumentality or other entity.  In contrast to the Goodnow Library Foundation, Inc., which was created by the Library and whose board of directors is elected by the Trustees, the Friends was incorporated by a private individual and is governed by an independent, self-perpetuating board of directors.

The Friends’ corporate form creates responsibilities in its governing body.  As members of its governing board, the Friends’ directors are required to act prudently and in good faith, in a manner they reasonably believe to be in the best interests of the organization.  Not only the directors but also the officers of the Friends have fiduciary duties to the organization as prescribed by the law of corporations.  The duty of loyalty requires directors and officers to act with undivided loyalty in the best interest of the Friends.  The duty of care obliges directors and officers to act with reasonable prudence, exercising independent judgment, making careful and informed decisions and assuming an active role throughout the decision-making process.

One of the main areas in which directors and officers exercise the duties of loyalty and care is the stewardship of funds.  The Friends’ board must carefully maintain and invest the organization’s assets and may expend the assets only in a way that is consistent with the Friends’ charitable purposes, as set forth in its Articles of Organization.  As you know, in its simplest form, the Friends’ charitable purpose is to benefit the Library.  But, in fact, as stated in its Articles of Organization, the Friends’ purpose is broad and multi-faceted, including stimulating “public interest in the Goodnow Library,” promoting “increased knowledge and understanding of its resources, services and needs,” soliciting “contributions, endowments and bequests,” and undertaking related activities that are consistent with its status as a tax-exempt 501(c)(3) organization.  Only one of the Friends’ stated purposes, “undertaking purchases of non-budgeted library equipment,” expressly involves direct financial assistance to the Library.  A careful reading of the Friends’ legal statement of purpose suggests that the Friends exists more to stimulate public interest in and increase knowledge of the Goodnow Library in Sudbury and beyond than to raise funds and give them to the Library.  The Friends seems to have been formed to serve as the public face of the Library, not merely its fundraising arm.

The duty of the Friends’ directors and officers, then, is to steward the organization’s funds and spend them in furtherance of the Friends’ charitable purposes, which may include a broad array of programs and activities that support and promote the Library.  Exercising their duty of loyalty, the Friends’ officers and directors are required to make decisions about expenditures out of loyalty to the Friends, not to the Library or the community, although the Library and the community will benefit from the Friends’ expenditures.  The duty of care also requires the directors and officers to participate actively, exercise independent judgment and make careful and informed decision in spending the Friends’ funds, not to simply disburse the funds to the Library.

**Restricted vs. Earmarked Gifts**

An additional legal consideration in the Friends board’s stewardship of the organization’s funds is the intent of donors who contributed the funds.  Many, if not most, of the funds raised by the Friends, including funds raised through book sales and trivia nights as well as from membership dues, are contributed for the Friends’ general purposes.  These funds must be used for the Friends’ stated charitable purposes, but within those purposes can be expended in a variety of ways.  Permissible uses of these funds would include maintaining the Friends’ website, hiring independent contractors or even staff, and funding further fundraising activities.  Using donated funds to promote “public interest in the Goodnow Library” and “increased knowledge and understanding” of the Library is also squarely within the Friends’ charitable purposes and benefits the Library.  The Trustees are not incorrect in asserting in their January 20 letter that funds contributed to the Friends are solicited and donated for the purpose of benefiting the Library.  However, the January 20 letter also asserts that the only use consistent with the intent of donors is to transfer the funds immediately to the Library.  Not only are there many ways of using donated funds to benefit the Library that are consistent with the intent of the Friends’ donors, but, as discussed further below, to simply hand over the funds would be inconsistent with the Friends’ independent corporate and 501(c)(3) status and with its board’s fiduciary duty to steward the funds prudently.  Benefitting the Library is at the core of the Friends’ charitable purposes, but since these purposes allow for a variety of ways of benefitting the Library, the Friends can further these purposes without being compelled to simply release its funds to the Library.

In addition to funds given to the Friends for its general purposes, the Friends may occasionally accept donations that are for restricted purposes.  To date, the Friends has not received any restricted gifts.  If it held restricted gifts, the restrictions attached to such donations would be enforceable under Massachusetts law.  However, it is important to distinguish between donations that are restricted and donations that are earmarked.  Donations may be restricted, for example, to supporting children’s programs or landscaping at the Library.  Such gifts must be expended by the Friends for the designated purpose in accordance with the donor’s intent.  However, the Friends’ board of directors still exercises discretion and control over aspects of a restricted gift that do not carry a restriction.  For example, a gift restricted for supporting children’s programming at the Library is restricted as to purpose but may be unrestricted as to the timing of its expenditure.  The Friends must expend the gift to support the Library’s children’s programming, but the Friends’ board retains discretion not only over which children’s programs to fund but also over the timing of the funding.  Conversely, a gift may be restricted as to timing, requiring for example that the funds be expended during the current fiscal year, but it may carry only a broad purpose restriction, such as “for expenses of the Library that will enable it to operate during the current pandemic.”  For such a gift, the Friends would be obligated to spend the funds within the current fiscal year but could exercise discretion regarding the specific Library expenses to fund.

The reason that the Friends retains some discretion and control in spending even a restricted gift is that this discretion and control are the right and responsibility of an independent nonprofit corporation.  A gift over which the Friends does not exercise discretion and control is an earmarked gift, not a restricted gift.  The Friends may not and does not accept earmarked gifts.  To accept earmarked gifts, simply passing funds along to the Library, would be to allow itself to be treated as a mere conduit, a status that is inconsistent with the independent legal status of the Friends as a nonprofit corporation with its own charitable purposes.  Further, in allowing the Friends to be treated as a conduit, the board of directors would be abrogating its fiduciary duties to the organization.  The duty of care requires the directors to be deliberate and to exercise independent judgment in spending the organization’s funds, and the duty of loyalty requires them to maintain undivided loyalty to the Friends as an independent organization benefitting the Library.  Thus, the Friends board of directors not only has the right to exercise discretion and control over any aspect of the expenditure of funds that is not legally restricted, but it also has the responsibility to exercise this discretion and control.  To allow itself to be treated as a mere conduit would be contrary to the responsibilities of the board and to the independent legal status of the organization.

**Tax Considerations**

In addition to its legal status as a Massachusetts nonprofit corporation, the Friends is also a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.  Under the 501(c)(3) rules, the Friends is required to exercise the same level of discretion and control as under Massachusetts law governing nonprofit corporations.  A 501(c)(3) organization may not act as a mere conduit, and in fact the IRS has in some cases revoked the tax-exempt status of organizations that allowed themselves to be treated as conduits.  Beyond this general rule, there are two specific considerations that underline the Friends’ independent status.

The first consideration is the 501(c)(3) sub-category under which the IRS has classified the Friends.  The Friends’ letter of determination, issued by the IRS in 1989, grants 501(c)(3) status to the Friends and also categorizes it as a “supporting organization.”  This categorization is the result of the Friends’ mission to benefit the Library as expressed in its Articles of Organization, but it is also associated with a particular funding pattern.  Supporting organizations, like private foundations, typically receive most of their funds from a small number of sources, and for this reason they are subject to special rules within the framework of the 501(c)(3) rules.  Because the Friends is funded by many donations from the general public, it does not fit this category and, in fact, qualifies as a “publicly-supported” organization, the broadest and most independent category under the 501(c)(3) classification.  The IRS does not require a formal ruling in order for an organization to transition from supporting organization to publicly-supported charity status; this change can simply be made by demonstrating that the organization meets the “public support test,” which the Friends did on its most recently filed Form 990.  As you know, we have nevertheless applied to the IRS for a new determination letter categorizing the Friends as a publicly-supported organization.  The application has been delayed because of a backlog at the IRS, but there is little doubt that the IRS will issue the letter.  Once this letter has been issued, the Friends will be officially recognized in publicly available sources as an independent publicly-supported organization.  The Friends’ mission will still be tied to the Library, but the organization will no longer carry the label “supporting organization.”

The second consideration related to the Friends’ 501(c)(3) status is the deductibility of your donors’ contributions.  Many donors to the Friends undoubtedly deduct their contributions on their income tax returns; individual as well as corporate donors are permitted to take these deductions.  Some contributions come in the form of charitable bequests, which are deductible for estate tax purposes.  In making their gifts, your donors rely on your 501(c)(3) status as well as on the well-known requirements – familiar not only to donors but to their accountants and other advisors – for making tax-deductible contributions.  In order for donors to receive this financial benefit, however, the 501(c)(3) organization to which the contributions are made must exercise discretion and control over the donated funds and, again, may not be a mere conduit.  The IRS has established this clearly and repeatedly:

“[A] deduction will be allowed if it is established that the gift is intended by the donor for the use of the charitable organization. The test is whether the organization has full control of the donated funds, and discretion as to their use, to ensure that they will be used to carry out the charitable organization's functions and purposes.”  (See Rev. Rul. 62-113, 1962-1 C.B. 10.)

If a 501(c)(3) organization merely collects funds and transfers them to another entity, donors to that organization are not permitted to deduct their contributions.  Once again, it is not only the right but the responsibility of the Friends and its fiduciaries to ensure that the organization exercises the requisite control over its assets to ensure that its donors’ contributions continue to be tax-deductible.

**Additional Considerations**

The January 20 letter also requests that the Friends “cease and desist from any and all fundraising efforts in the name of or for the stated basis of benefitting the Library.”  Anyone can raise funds to support the Goodnow Library or any other public institution.  Just as it can continue to conduct activities and expend funds to further its charitable purposes of benefitting and supporting the Library, the Friends can also continue to raise funds for this purpose – its own charitable purpose.  This is fully within the board’s discretion and control.  The only basis for the Trustees’ request would seem to be that the Friends’ activities are carried out “in the name” of the Library – a name the Friends has shared since its incorporation more than thirty years ago.  The Friends does not raise funds “in the name of” the Library.  It raises funds in its own name.

In sum, the Friends is an independent nonprofit corporation and 501(c)(3) publicly-supported charity, and its board of directors has sole discretion and control in conducting activities and expending funds consistent with its donors’ intent and in furtherance of its own charitable purposes, which are – in a whole host of ways – to benefit and support the Goodnow Library.  That benefit and support cannot be delegated to the Library director or anyone else.

Sincerely,
Janet Rickershauser