

SWAN BOARD MEETING AGENDA

SWAN

800 Quail Ridge, Westmont, IL 60559

September 20, 2019 - Time 9:30 a.m.

Conference Room

1. Call to Order, Roll Call

2. Introduction of Visitors/Public Comment

Public comment is allowed at SWAN meetings

3. Action Item – Acceptance of the September 20, 2019 SWAN Board Meeting Agenda

RESOLVED, THAT THE SWAN BOARD ACCEPTS THE SEPTEMBER 20, 2019 SWAN BOARD MEETING AGENDA AS PRESENTED

4. Action Item – Approval of SWAN Financials, July (Exhibit pgs. 3-9)

- a. Balance sheet and detail of expenditures for August 2019
- b. Approval of the payment of bills for August 1, 2019 through August 31, 2019 in the amount of \$494,870.64

RESOLVED, THAT THE SWAN BOARD APPROVES THE PAYMENT OF BILLS FOR AUGUST 1 THROUGH AUGUST 31, 2019 AND ACCEPTS THE BALANCE SHEET AND DETAIL OF EXPENDITURES FOR AUGUST 2019

5. Action Item – Acceptance of the August 23, 2019 SWAN Board Meeting Minutes (Exhibit pgs. 10-14)

RESOLVED, THAT THE SWAN BOARD ACCEPTS THE AUGUST 23, 2019 SWAN BOARD MEETING MINUTES AS PRESENTED

6. Reports

- a. Board President Report
- b. Executive Director Report (Exhibit pgs. 11-17)
- c. Operations Report (Exhibit pgs. 18-29)
- d. Treasurer Report

- e. Board Calendar (Exhibit pgs. 30-32)
7. Discussion Item – Reconstitute as a Mission Driven 501(c)3 with Clear Representative Governance Practices, SWAN Strategic Plan Objective 3
- a. SWAN 501(c)3 Study: Summary & Update (Exhibit pgs. 33-47)
 - b. 2014 Legal Opinion: Illinois Intergovernmental Instrumentalities (Exhibit pgs. 48-52)
 - c. 2018 Legal Opinion: SWAN Bylaws, Voting, OMA (Exhibit pgs. 53-55)
 - d. 2019 Legal Opinion: SWAN 501(c)3 Conversion (Exhibit pgs. 56-61)
 - e. 2019 Legal Opinion: SWAN 501(c)3 Board & Donations (Exhibit pgs. 62-65)
 - f. Governance Study Committee: Written Charge (Exhibit pg. 66)
 - g. Board Discussion Topics: SWAN 501(c)3 Study: Summary & Update (Exhibit p. 47)

8. Next Board Meeting

The next SWAN Board Meeting will be held on October 18, 2019 at SWAN Quail Ridge at 9:30 a.m.

9. Adjournment

*All agenda items may be acted upon by the SWAN Board

SWAN Board Member	Library	Office	Term Expires
Ted Bodewes	Thomas Ford Memorial Library	President	July 1, 2020
Jamie Bukovac	Indian Prairie Public Library	Treasurer	July 1, 2020
Stacy Wittmann	Eisenhower Public Library District	Vice President	July 1, 2021
Julie Milavec	Downers Grove Public Library		July 1, 2021
Dawn Bussey	Glen Ellyn Public Library	Secretary	July 1, 2022
Robin Wagner	South Holland Public Library		July 1, 2022
Jane Jenkins	Green Hills Public Library District		July 1, 2022

August 2019	YTD Actual	FY20 Original Budget	17%
Revenues	555,395.08	3,301,526.00	17%
Expenses	534,472.36	3,371,976.00	16%
Excess of Revenues over (under) Expenses	20,922.72	(70,450.00)	

SWAN
Balance Sheet
As of 8/31/2019

	Balance End Of Month		
Assets			Average Interest Rates & Interest Earned during August
Cash & cash equivalents			
Cash- MaxSafe	1,393,856.67		2.370% \$ 2,800.02
Cash- Hinsdale Bank Checking	<u>455,131.96</u>		0.000% \$ -
Total Cash & cash equivalents	1,848,988.63		Investment Income <u>\$ 2,800.02</u>
ProPay Funds			
ProPay Funds	<u>890.87</u>		
Total ProPay Funds	890.87		
Accounts receivables			
Accounts Receivable	<u>77,272.86</u>		
Total Accounts receivables	77,272.86		
Prepaid expenses			
Deposits	23,467.08		
Vendor Credits	4,757.56		
Prepaid Expenses	<u>728,097.77</u>		
Total Prepaid expenses	756,322.41		
Capital assets, net			
Building And Improvements	6,895.00		
Equipment	36,500.50		
Computers	324,383.36		
Accumulated Depreciation	<u>(317,024.73)</u>		
Total Capital assets, net	50,754.13		
Other Assets			
Deferred Outflows - OPEB	<u>8,157.00</u>		
Total Other Assets	8,157.00		
Total Assets	<u>2,742,385.90</u>		
Liabilities			
Accounts payable			
Accounts Payable	<u>9,310.74</u>		
Total Accounts payable	9,310.74		
Accrued Liabilities			
Accrued Liabilities	<u>24,305.10</u>		
Total Accrued Liabilities	24,305.10		
Payroll			
Salaries Payable	37,272.48		
PR Tax Withheld Payable	11,976.50		
Retirement Payable	6,884.30		
PR Tax Expense Payable	<u>3,905.95</u>		
Total Payroll	60,039.23		
Other Postemployment Benefits			
Postemployment Benefits	<u>39,101.00</u>		
Total Other Postemployment Benefits	39,101.00		
Deferred revenue			
Deferred Revenue	345,914.07		
Deferred Revenue - MAGIC Fee Supplement	<u>190,449.00</u>		
Grant			
Total Deferred revenue	536,363.07		
Compensated absences			
Compensated Absences	<u>99,559.16</u>		
Total Compensated absences	99,559.16		
Facilities			
Rent Payable	<u>49,602.28</u>		
Total Facilities	49,602.28		
Other liabilities			
Deferred Inflows - OPEB	<u>14,016.00</u>		
Total Other liabilities	14,016.00		
Total Liabilities	<u>832,296.58</u>		
Net Assets			
Beginning Net Assets			
Unrestricted	<u>1,889,166.60</u>		
Total Beginning Net Assets	1,889,166.60		
Current YTD Net Income	<u>20,922.72</u>		
Total Net Assets	<u>1,910,089.32</u>		
Total Liabilities and Net Assets	<u>2,742,385.90</u>		

SWAN
Statement of Revenues and Expenses
From 8/1/2019 Through 8/31/2019
(16.67% through FY2020)

		Current Month Actual	Current Month Original Budget	YTD Actual	YTD Original Budget	Total Original Budget	Percent of Annual Budget	General Ledger Line Item Detail
Revenue								
4050	Other Grants	0.00	417.00	0.00	834.00	5,000.00	0.00%	RAILS Grants
4060	Fees For Services And Materials	228,385.33	228,385.00	456,770.66	456,770.00	2,740,626.00	16.66%	SWAN Quarterly, Annual, and Semi-Annual Fees
4061	Internet & Enhanced Access Fees	303.25	0.00	606.50	0.00	0.00	0.00%	SWAN Annual Internet Access Fees
4070	Reimbursements	2,661.12	633.00	2,661.12	1,266.00	7,600.00	35.01%	Member Reimbursements and SWANx Sponsor Table Registrations
4071	Reimbursements - Lost Materials	388.29	0.00	2,027.13	0.00	0.00	0.00%	Reciprocal Borrowing and ILL Losses
4072	Reimbursements - Collection Agency Fees	0.00	75.00	30.00	150.00	900.00	3.33%	Reciprocal Borrowing and ILL Loss Collection Agency Fees
4075	Group Purchase Receipts	0.00	60.00	0.00	120.00	721.00	0.00%	Group Purchases for Members
4080	Investment Income	2,800.02	1,833.00	5,853.21	3,666.00	22,000.00	26.60%	Interest
4090	Other Revenue	43,723.23	43,723.25	87,446.46	87,446.50	524,679.00	16.66%	RAILS Support to SWAN
Total Revenue		<u>278,261.24</u>	<u>275,126.25</u>	<u>555,395.08</u>	<u>550,252.50</u>	<u>3,301,526.00</u>	<u>16.82%</u>	
Expenses								
5000	Library Professionals	39,700.29	37,375.00	59,117.99	62,290.00	323,900.00	18.25%	Staff Salaries
5010	Other Professionals	84,405.03	111,310.00	125,908.06	185,518.00	964,700.00	13.05%	Staff Salaries
5020	Support Services	37,781.06	29,790.00	56,357.48	49,652.00	258,200.00	21.82%	Staff Salaries
5030	Social Security Taxes	11,759.64	13,660.00	17,525.05	22,768.00	118,400.00	14.80%	Social Security Taxes
5050	Worker's Compensation	245.17	183.00	490.34	366.00	2,200.00	22.28%	Worker's Compensation Insurance
5060	Retirement Benefits	15,711.10	16,260.00	23,323.45	27,098.00	140,900.00	16.55%	Retirement Benefits and Retirement Plan Fees
5070	Health, Dental, Life And Disability Insurance	14,262.45	19,550.00	32,857.16	39,100.00	234,600.00	14.00%	Health, Dental, Life & Disability Insurance
5080	Other Fringe Benefits	0.00	208.00	0.00	416.00	2,500.00	0.00%	Tuition Reimbursements
5085	Wellness Benefits	99.00	425.00	99.00	850.00	5,100.00	1.94%	Staff Wellness
5100	Recruiting	0.00	75.00	0.00	150.00	900.00	0.00%	Background Checks and Job Postings
5110	Print Materials	936.64	667.00	936.64	1,334.00	8,000.00	11.70%	Printed Items (Branded)
								ALA TechSource Subscription
5130	E-Resources	0.00	42.00	0.00	84.00	500.00	0.00%	
5140	Rent/Lease	8,465.77	8,825.00	25,756.85	17,650.00	105,904.00	24.32%	Facility Lease (Including Tenant's Share of Real Estate Taxes, Operating Expenses, and Insurance)
5150	Utilities	1,175.71	533.00	1,175.71	1,066.00	6,400.00	18.37%	Gas and Electric
5160	Property Insurance	123.00	125.00	246.00	250.00	1,500.00	16.40%	Flood Insurance
5170	Repairs And Maintenance	0.00	98.00	103.68	196.00	1,180.00	8.78%	Key Fob Maintenance and Other Facility Maintenance
5180	Custodial/Janitorial Service And Supplies	240.38	708.00	946.18	1,416.00	8,500.00	11.13%	Cleaning Services and Supplies
5190	Other Buildings and Grounds	0.00	8.00	0.00	16.00	100.00	0.00%	Security Camera Surveillance Subscription

SWAN
Statement of Revenues and Expenses
From 8/1/2019 Through 8/31/2019
(16.67% through FY2020)

		Current Month Actual	Current Month Original Budget	YTD Actual	YTD Original Budget	Total Original Budget	Percent of Annual Budget	General Ledger Line Item Detail
5250	In-State Travel	104.53	183.00	104.53	366.00	2,200.00	4.75%	In-State Travel
5260	Out-Of-State Travel	0.00	917.00	0.00	1,834.00	11,000.00	0.00%	Out-of-State Travel
5270	Registrations And Meeting, Other Fees	91.19	242.00	91.19	484.00	2,900.00	3.14%	Snacks, Supplies, and Lunches for Meetings and Staff Events
5280	Conferences And Continuing Education Meetings	859.61	1,167.00	1,346.28	2,334.00	14,000.00	9.61%	Sirsi Dynix Training and Staff Conference and Class Registrations as well as SWANx Expenses
5300	Liability Insurance	749.50	742.00	1,499.00	1,484.00	8,900.00	16.84%	General Liability, Crime, Cyber Crime, and D&O Insurance
5310	Computers, Software And Supplies	6,500.00	5,202.00	7,670.41	10,404.00	62,426.00	12.28%	Computer, Software, and Supplies under \$5,000 Individual Cost as well as Subscriptions for Adobe Creative Cloud, Adobe Acrobat Pro, Microsoft Office 365, Panda Security, SendGrid Email Delivery System, Asana Project Management, Go To Assist Software, Go To Meeting Software, Microsoft pfSense Usage, and Microsoft Azure
5320	General Office Supplies And Equipment	465.21	333.00	465.21	666.00	4,000.00	11.63%	Office Supplies and Equipment under \$5,000 Individual Cost Including Coffee
5330	Postage	352.82	75.00	352.82	150.00	900.00	39.20%	Postage
5380	Telephone And Telecommunications	1,587.28	1,617.00	2,842.28	3,234.00	19,400.00	14.65%	Phone, Chat, and Internet
5390	Equipment Rental	219.20	308.00	455.81	616.00	3,700.00	12.31%	Copier Lease and Usage
5400	Equipment Repair And Maintenance Agreements	61,519.06	54,475.00	109,618.11	108,950.00	653,700.00	16.76%	Sirsi Dynix Annual Maintenance, Sirsi Dynix eRC Connector, EBSCO Open Athens Subscription, EBSCO Discovery Subscription, Lenovo Warranty, Smartnet Maintenance, NetGate Support, and Linux Software Maintenance
5410	Legal	0.00	417.00	0.00	834.00	5,000.00	0.00%	Legal Fees
5420	Accounting	0.00	704.00	0.00	1,408.00	8,445.00	0.00%	Audit and Actuary Expenses
5430	Consulting	86.67	167.00	173.34	334.00	2,000.00	8.66%	HR Source Costs
5435	Payroll Service Fees	264.50	325.00	529.00	650.00	3,900.00	13.56%	Paylocity Payroll Service Fees
5440	Contractual Staff	0.00	200.00	0.00	400.00	2,400.00	0.00%	Answering Service Costs

SWAN
Statement of Revenues and Expenses
From 8/1/2019 Through 8/31/2019
(16.67% through FY2020)

		Current Month Actual	Current Month Original Budget	YTD Actual	YTD Original Budget	Total Original Budget	Percent of Annual Budget	General Ledger Line Item Detail
5450	Information Service Costs	50,292.88	28,017.00	56,842.53	56,034.00	336,200.00	16.90%	Formsite Membership Costs, OCLC Fees, Authority Processing, Syndetic Reviews, SSL Certificate Costs, Survey Monkey Subscription, MailChimp Subscription, ALA RDA Toolkit, WebDewey, and EBSCO Novelist Subscription
5480	Other Contractual Services	1,800.05	3,775.00	1,800.05	7,550.00	45,300.00	3.97%	Unique Management Placements and Monthly Notice Printing
5485	Group Purchases	361.75	60.00	361.75	120.00	721.00	50.17%	Group Purchases for Members including Credit Card Swipes
5490	Depreciation	2,847.29	0.00	5,694.58	0.00	0.00	0.00%	Monthly Depreciation Expense
5500	Professional Association Membership Dues	0.00	33.00	0.00	66.00	400.00	0.00%	Professional Memberships for SWAN and Staff
5510	Miscellaneous	(43.78)	83.00	(249.67)	166.00	1,000.00	(24.96)%	Member Overpayments and Double Payments to be Reimbursed, Allowance for Doubtful Accounts Additions, Credit Card Overage Charges, as well as Reciprocal Borrowing and Vendor Adjustments from Prior Years
5515	Miscellaneous - E-Commerce Fees	<u>18.50</u>	<u>0.00</u>	<u>31.55</u>	<u>0.00</u>	<u>0.00</u>	0.00%	Fees for SWAN ProPay Account Used for Testing
Total Expenses		<u>342,981.50</u>	<u>338,884.00</u>	<u>534,472.36</u>	<u>608,304.00</u>	<u>3,371,976.00</u>	<u>15.85%</u>	
Excess of Revenues over (under) Expenses		<u>(64,720.26)</u>	<u>(63,757.75)</u>	<u>20,922.72</u>	<u>(58,051.50)</u>	<u>(70,450.00)</u>		

SWAN

Check/Voucher Register - Check and Disbursement Register

1003 - Cash- Hinsdale Bank Checking

From 8/1/2019 Through 8/31/2019

Effective D...	Vendor Name	Transaction Description	Check Amount
8/1/2019	Reaching Across Illinois Library System	test for address	1.00
8/1/2019	Reaching Across Illinois Library System	test for address	(1.00)
8/5/2019	ComEd	Electric 6/18-7/18/19	537.43
8/5/2019	ICMA Retirement Corporation	Retirement Plan 7/1-9/30/19	250.00
8/5/2019	Nicor Gas	Gas 6/14-7/15/19	45.86
8/5/2019	Wells Fargo Vendor Fin Serv	Copier Lease	219.20
8/5/2019	ICMA Retirement Corporation	Retirement Deduction and Contribution: Aug. 3, 2019	5,154.40
8/5/2019	ICMA Retirement Corporation	Retirement Deduction and Contribution: Aug. 3, 2019	1,729.90
8/8/2019	Paylocity Corporation	Net Wages: Aug. 3, 2019	37,353.75
8/8/2019	Paylocity Corporation	Payroll Taxes: Aug. 3, 2019	15,914.22
8/9/2019	Paylocity Corporation	Payroll Service Fee: Aug. 3, 2019	92.65
8/15/2019	First Bankcard	August 2019 Credit Card Payment of June/July Balances	6,389.20
8/16/2019	Reaching Across Illinois Library System	GHS Grant Funds owed to RAILS	(9,310.74)
8/19/2019	ICMA Retirement Corporation	Retirement Deduction and Contribution: Aug. 17, 2019	5,152.30
8/19/2019	ICMA Retirement Corporation	Retirement Deduction and Contribution: Aug. 17, 2019	1,728.38
8/22/2019	Alpha Graphics	Printed Conference Guides	535.50
8/22/2019	Cintas	Mats for Doorway Entry	107.80
8/22/2019	Comcast	Internet Service	1,255.00
8/22/2019	ComEd	Electric 7/18-8/16/19	548.92
8/22/2019	Crystal Vela	Travel Reimbursement	49.61
8/22/2019	IHLS-OCLC	WebDewey for Downers Grove	184.50
8/22/2019	IHLS-OCLC	FY2020 OCLC Service Fee	233,356.47
8/22/2019	Lauren Levaggi	Travel Reimbursement	18.14
8/22/2019	Limricc-Phip	Health Insurance for August 2019	21,769.58
8/22/2019	Wellness Insurance Network-WIN	Life Insurance for August 2019	186.20
8/22/2019	Marcive Inc	Authority Records	4,385.52
8/22/2019	Nicor Gas	Gas 7/16-8/13/19	43.50
8/22/2019	OCLC, Inc.	WebDewey Group	2,187.45
8/22/2019	Panda Security	Cloud-Based Software Security	2,068.71
8/22/2019	Reliance Standard Life Insurance Co	LTD/STD for August 2019	809.18
8/22/2019	SirsiDynix, Inc.	BlueCloud Mobile Setup-1 time	91,048.00
8/22/2019	SirsiDynix, Inc.	Project Management	644.00
8/22/2019	SirsiDynix, Inc.	Project Management	284.00
8/22/2019	SirsiDynix, Inc.	Project Management	284.00

SWAN

Check/Voucher Register - Check and Disbursement Register

1003 - Cash- Hinsdale Bank Checking

From 8/1/2019 Through 8/31/2019

Effective D...	Vendor Name	Transaction Description	Check Amount
8/22/2019	Steven Schlewitt	Kindle for SWANx Raffle	63.74
8/22/2019	Unique Management Services, Inc.	Placement for July 2019	8.95
8/22/2019	Unique Management Services, Inc.	Printed Notices for July 2019	1,791.10
8/22/2019	Virginia Blake	Staff Reimbursement	109.81
8/22/2019	Paylocity Corporation	Net Wages: Aug. 17, 2019	37,595.90
8/22/2019	Paylocity Corporation	Payroll Taxes: Aug. 17, 2019	16,035.53
8/23/2019	Paylocity Corporation	Payroll Service Fees: Aug. 17, 2019	171.85
8/26/2019	Quail Ridge Drive Investors, LLC	September 2019 Rent Payment	8,756.70
8/28/2019	First Bankcard	August 2019 Credit Card Payment of July/Aug. Balances	5,314.43
		Total 1003 - Cash- Hinsdale Bank Checking	494,870.64
Report Total			494,870.64

SWAN BOARD MEETING MINUTES

SWAN

800 Quail Ridge Drive, Westmont, IL 60559

August 23, 2019

Call to Order, Roll Call

Vice President Wittmann called the meeting to order at 9:31 a.m. The following members were present to establish a quorum:

Jamie Bukovac (arrived at 9:43 a.m.)

Julie Milavec

Dawn Bussey

Stacy Wittmann

Jane Jenkins

Robin Wagner

Present Bodewes was absent

Introduction of Visitors/Public Comment

Edith Craig, St. Charles Public Library

Aaron Skog, SWAN Executive Director

Dawne Tortorella, SWAN Assistant Director

Ginny Blake, SWAN Office Manager

No public comment.

Action Item – Acceptance of the August 23, 2019 SWAN Board Meeting Agenda

Milavec moved, seconded by Wagner that it be

RESOLVED, THAT THE SWAN BOARD ACCEPTS THE AUGUST 23, 2019 SWAN BOARD MEETING AGENDA AS PRESENTED.

Motion carried by unanimous voice vote.

Action Item – Approval of SWAN Financials, July 2019

Milavec moved, seconded by Jenkins that it be

RESOLVED, THAT THE SWAN BOARD APPROVES THE PAYMENT OF BILLS FOR JULY 1 THROUGH JULY 31, 2019 AND ACCEPTS THE BALANCE SHEET AND DETAIL OF EXPENDITURES FOR JULY 2019 AS PRESENTED

Motion carried by roll call vote with the following results:

Ayes: Bukovac, Milavec, Wittmann, Bussey, Jenkins, Wagner

Action Item – Acceptance of the July 19, 2019 SWAN Board Meeting Minutes

Milavec moved, seconded by Jenkins that it be

RESOLVED, THAT THE SWAN BOARD ACCEPTS THE July 19, 2019 SWAN BOARD MEETING MINUTES AS PRESENTED

Motion carried by unanimous voice vote.

Reports

a. Board President Report

President Bodewes was absent – no report.

b. Executive Director Report

Skog indicated that the expenses for July were higher than normal due to the annual renewals for SirsiDynix, EBSCO & OCLC.

Skog indicated he would like to bring the Clarity Task Force updates to the November Board Meeting and then if all goes well, present an update at the December Quarterly meeting. Discussion continued regarding the library staff participating in focus groups, the timing for staff, and some of the staff not wanting to speak up.

Question about mobile app features. Tortorella responded with answers and solutions.

Question was asked to explain “what is the goal of the working group”? Tortorella explained: Answer the question, “is exposing consortia holdings of value and how”? We wanted to make sure people understood what consortia holdings are. To have a better understanding going forward. Skog noted the improvement the relationship has with OCLC over the last 18 months.

c. Operations Report

Skog briefly discussed the lower attendance at SWANx this year. Next year the plan is to get the sessions choices out to members earlier.

d. Treasurer Report

No report

e. Board Calendar

Skog will discuss how closed sessions work with the new Secretary, Dawn Bussey. Review Budget process timetable with the board beginning at the next meeting on September 20. Change Sunday May 17, 2020 to Friday May 15, 2020 for Regular SWAN Board Meeting.

Action Item – Accept Recommendation on SWAN Accounting Service

Skog discussed for the Board the 3 proposals that were received. Lauterbach & Amen came in at the lowest cost for what they outlined. With Lauterbach & Amen becoming our accountant, SWAN will need to send out RFP for new Auditors. The Budget Line Account # 5420 will need to be increased to cover the larger fees. This will be brought forward at the September Quarterly meeting as Agenda item to amend the budget. Skog outlined Lauterbach & Amen Proposal costs, and what is involved going forward.

Jenkins moved, seconded by Milavec that it be

RESOLVED THAT THE SWAN BOARD ACCEPTS THE RECOMMENDATION ON THE SWAN ACCOUNTING SERVICES OF LAUTERBACH & AMEN

Motion carried by roll call vote with the following results:

Ayes: Bukovac, Milavec, Wittmann, Bussey, Jenkins, Wagner

Discussion Item – SWAN Quarterly Meeting Agenda

The Discussion Item – “What is BLUEcloud?” has been asked to change the wording to be more specific. Skog will re title for the quarterly meeting.

A brief discussion about remote access at quarterly meetings and the concerns some have of hearing the questions, comments. Skog will report add as a discussion item for feedback at next Board Meeting.

Next Board Meeting

The next SWAN Board Meeting will be held on September 20, 2019 at SWAN Quail Ridge at 9:30 a.m.

The meeting was adjourned by Vice President Wittmann at 10:40 a.m.

*All agenda items may be acted upon by the SWAN Board

SWAN Board Member	Library	Office	Term Expires
Ted Bodewes	Thomas Ford Memorial Library	President	July 1, 2020
Jamie Bukovac	Indian Prairie Public Library	Treasurer	July 1, 2020
Stacy Wittmann	Eisenhower Public Library District	Vice President	July 1, 2021
Julie Milavec	Downers Grove Public Library		July 1, 2021
Dawn Bussey	Glen Ellyn Public Library	Secretary	July 1, 2022
Robin Wagner	South Holland Public Library		July 1, 2022
Jane Jenkins	Green Hills Public Library District		July 1, 2022

Minutes Prepared by Ginny Blake
Respectfully Submitted,

Dawn Bussey, Board Secretary

SWAN Executive Director Report

September 20, 2019

Accounting Service

The accounting service project completed the steps to amend the current FY20 budget. Lauterbach & Amen is preparing an engagement letter for SWAN. The timeline below was agreed to by Lauterbach during our first conference call.

Date	Step	Complete
August 2019	ED brings recommendation for accounting service	Yes
September 2019	Amend SWAN FY20 Budget	Yes
September 2019	ED approves engagement letter	
September 2019	SWAN staff complete training with accounting service	
October 2019	Complete design of new chart of accounts with board input	
November 2019	Draft FY21 budget and refine new accounts with board input	
Jan – Feb 2020	Migrate prior fiscal year data into accounting software	
March 2020	FY21 budget is approved: includes full year of accounting service costs	
April - June 2020	Run parallel accounting system against RAILS Finance system	
July 2020	SWAN is live in new accounting system	

SWAN Strategic Plan 2019-2023

Objective 1: Develop a Shared and Accurate Diagnosis of Member Dissatisfaction Around the Existing ILS and OPAC (Staff Interface and Online Catalog)

Clarity Task Force Update

Members of the Clarity Task Force and SWAN staff gathered input from our members to help identify and surface areas of concerns regarding our Library Services Platform. Last month, I outlined the four components of research. We have completed the four components and will provide written analysis for discussion at the October 2019 Clarity Task Force meeting.

1. Time Study (Complete)
2. Diary Studies (Complete)
3. Interviews (Initial Round Complete)
4. Focus Groups (Complete)

There will be a written report compiling what was learned and provide recommendations to the SWAN Board from Clarity. The goal is to provide a “shared diagnosis” as specified in the Objective 1 of the strategic plan.

Meeting	Activity	Date
Clarity Meeting	Review 4 research findings	September 11, 2019
Clarity Meeting	Draft Clarity Report & Shared Diagnosis	October 9, 2019
Clarity Meeting	Finalize Clarity Report & Shared Diagnosis	November 12, 2019
SWAN Board Meeting	Clarity presentation to SWAN Board	November 15, 2019
SWAN Quarterly Meeting	Clarity presentation to SWAN membership	December 5, 2019

This suggested timeline for Clarity will allow SWAN to start the 2020 calendar year with direction on how to proceed within next year’s tactical plan.

Objective 3: Reconstitute as a Mission Driven 501c3 with Clear Representative Governance Practices

Evaluate Organization Legal Entity

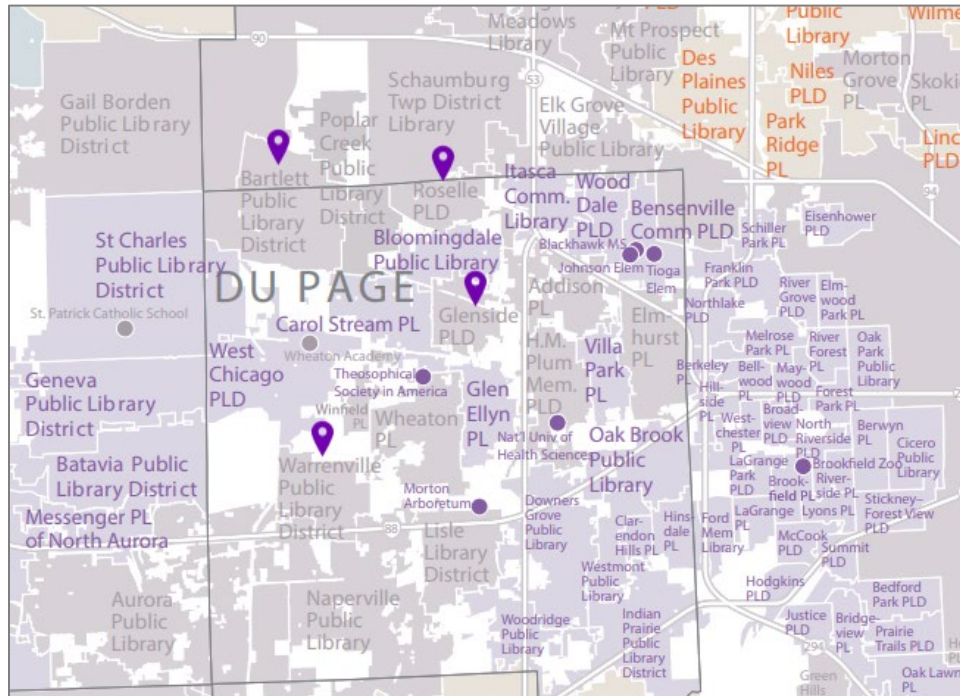
Ted Bodewes and I recommend the 501(c)3 discussion continue at the September 20, 2019 SWAN Board meeting. I have provided a written update for the SWAN Board for its meeting.

Monthly Financial Report

SWAN has received \$724,612.75 (95.6%) of the total July invoiced SWAN fees of \$757,748.50 within less than two months of billing. As of August 31, the libraries with outstanding prior and current period SWAN fees, include:

- Harvey – Owing \$29,685.49 in total, which includes the first and fourth quarters of FY19, fees for the last three quarters of FY18, and two reciprocal borrowing billings. SWAN received its last payment from Harvey on June 24, 2019 for a reciprocal borrowing invoice in the amount of \$153.00.
- Calumet Park – Owing \$7,893.64 in total, which includes the third (partial) and fourth quarters of fiscal year 2019, the first quarter of FY20, and eight reciprocal borrowing billings. Please note that SWAN received payment from Calumet Park on July 15, 2019 in the amount of \$3,755.00 as well as additional identical payment on August 12, 2019. These payments were applied against their outstanding FY18 and early FY19 invoices.
- Dolton – Owing \$5,165.00 for fourth quarter FY19 SWAN fees and one reciprocal borrowing billing.

Libraries Interested in SWAN



Warrenville Public Library District is taking a more formal step in evaluating its future as a standalone library. I reviewed the SWAN quotation, benefits of membership, and timeline with their head of technical services. The deadline to provide a letter of intent is the end of November 2019. Should Bartlett or Warrenville decide to not move forward at this time, the next window for libraries to join SWAN would be the second half of 2022.

Library	SWAN Quotation FY21	Current ILS	Letter of Intent Received
Bartlett	\$ 32,445.72	Millennium, Innovative	
Glenside	\$ 45,674.26	Polaris, Innovative	Yes
Roselle	\$ 29,622.80	Library.Solution, TLC	Yes
Warrenville	\$ 29,960.42	Horizon, SirsiDynix	

SWAN Operations Report: September 20, 2019

Member Engagement – All Staff

The following abbreviations are used to show departments: UX – User Experience, Bib Srvs – Bibliographic Services, IT – Information Technology and Systems Support, Admin – Administration.

Site Visits, Training, and Networking

During the past reporting period (August 20th – September 13th):

Date	Description	Staff	Department	Category
8/20/2019	Training: Using WorkFlows & Enterprise Search to Assist Patrons	Scott, Tara	Bib Srvs, UX	Training
8/21/2019	Focus Group Meeting - Batavia	Dawne, Tara	Admin, UX	Member Feedback/Research
8/21/2019	Training: Acquisitions Overview	Sam	Bib Srvs	Training
8/22/2019	Cataloging Advisory Group Meeting	Bib Services, Dawne, Aaron, Vickie	Bib Srvs, IT, Admin	Member Meeting
8/22/2019	Discovery & User Experience Meeting	Tara, Robin, Lauren, Crystal, Dawne, Scott, Ian	UX, Bib Srvs, IT, Admin	Member Meeting
8/23/2019	SWAN Board Meeting	Aaron, Ginny, Dawne	Admin	Governance
8/23/2019	Focus Group Meeting - Tinley Park	Dawne, Tara	Admin, UX	Member Feedback/Research
8/26/2019	Holds Demand Mgmt	Aaron, Dawne, Sam, Vickie, Crystal	Admin, Bib Srvs, IT, UX	Member Feedback/Research
8/28/2019	Training: Article Search ad EBSCO	Robin	UX	Training
8/28/2019	Training: Resource Sharing Overview	Dawne, Tara	Admin, UX	Training
9/4/2019	Site Visit (Lansing Public Library) - Outreach	Crystal, Vickie	UX, IT	Site Visit
9/5/2019	BLUEcloud Circulation Check-in	Crystal, Sam	UX, Bib Srvs	Member Feedback/Research

Date	Description	Staff	Department	Category
9/5/2019	SWAN Quarterly Meeting	Aaron, Ginny, Dawne, Steven, Vickie, Scott	Admin, Bib Srvs, IT	Governance
9/5/2019	Cataloging Standards Task Force Meeting	Bib Services	Bib Srvs	Member Meeting
9/6/2019	LLSAP Cataloging Managers	Scott, Dawne	Bib Srvs, Admin	Partners
9/10/2019	Site Visit (Batavia Public Library)	Sam, Ian	Bib Srvs, IT	RFID and Serials
9/10/2019	Focus Group Meeting - SWAN HQ	Dawne, Tara	Admin, UX	Member Feedback/Research
9/10/2019	Training: Setting Up Groups & Deflection	Dawne	Admin	Training
9/11/2019	Clarity Task Force	Aaron, Dawne, Scott, Steven, Tara	Admin, Bib Srvs, IT, UX	Governance
9/11/2019	Training: Creating Pre-Cats	Claudia	Bib Srvs	Training
9/12/2019	Training: BLUEcloud Analytics Overview	Dawne	Admin	Training
9/12/2019	Site Visit (Eisenhower) Desk Observation	Tara, Crystal	UX	Member Feedback/Research
9/13/2019	Focus Group Meeting - Oak Park	Dawne, Tara	Admin, UX	Member Feedback/Research

SirsiDynix & Vendor Partner Support & Consulting

- 8/27 – RAILS Group Purchase agreements available and collaboration (Robin, Tara, Dawne, Aaron)
- 9/4 – EBSCO review of services (Robin)
- 9/6 – BLUEcloud Acquisitions Phase 3 Pilot Webinar (Sam, Vickie, Claudia, Dawne)
- 9/13 - Sure Sailing Call (SWAN staff from all departments participate)
 - Handling of Display circulation (location vs display user checkout vs item category)
 - Examine Enterprise search results ranking order based on number of copies
 - In Transit and OnShelf items review

SWAN Assistant Director (Dawne Tortorella)

Holds Demand Management

The previously discussed change to Global Demand Management was put into effect on Tuesday, September 10th. From the support site post (<https://support.swanlibraries.net/news/2019-09/66833>) and SWANcom:

Our system is now configured to trap hold with the first item received.

If an item is checked in locally before it arrives in delivery, the item will be allocated to the patron waiting at your library for pick-up. The system will get the item into the hands of the patron as soon as possible.

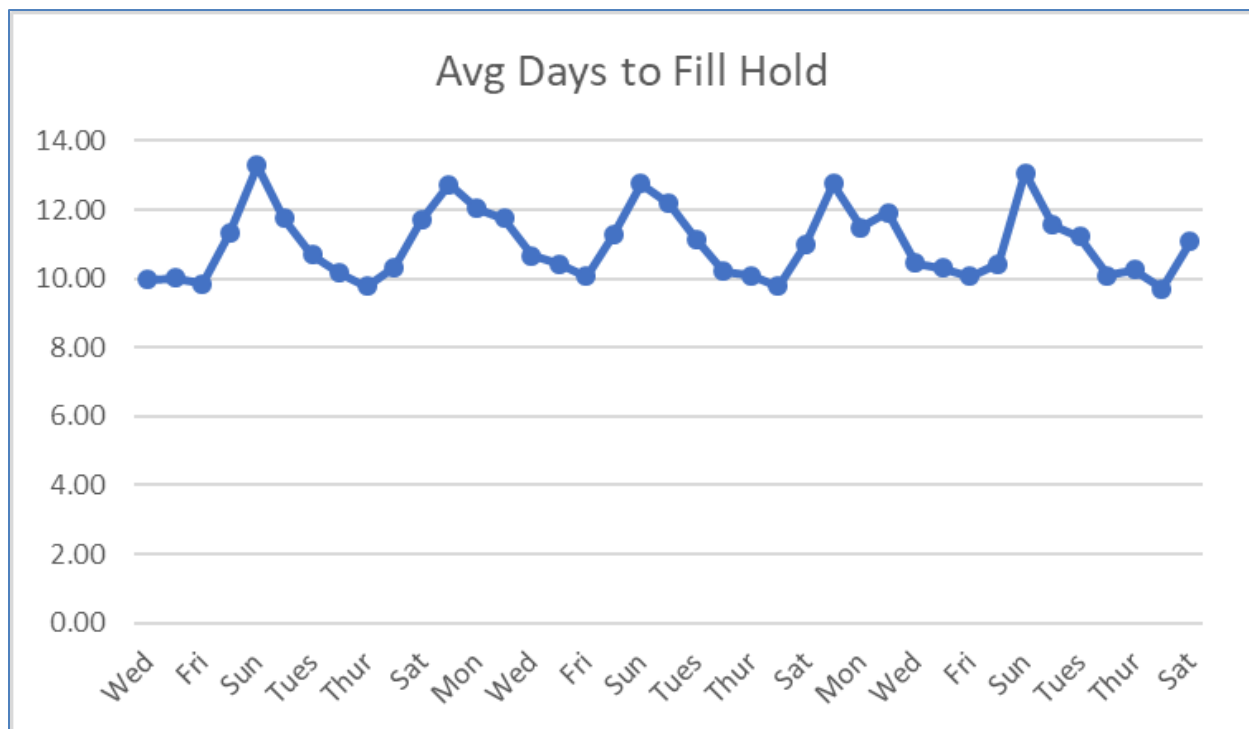
What does this change mean to me? Continue to process items as usual and follow the on-screen instructions for routing to holds, transit to other library, or reshelve locally. In a small number of cases items arriving from transit when checked in will immediately route back to the home library or to another library where the next patron is waiting. Know that in these cases, this has occurred because the patron waiting at your library for the item was able to get their hold filled more quickly with another copy.

Additional work is underway to develop a tool for libraries for checking items currently in transit where an item on the same bibliographic record is on shelf. This tool will allow libraries to check at their convenience and as often as desired, or not at all, to identify items which can fulfill a hold request for pick-up at the local library before the item in transit arrives.

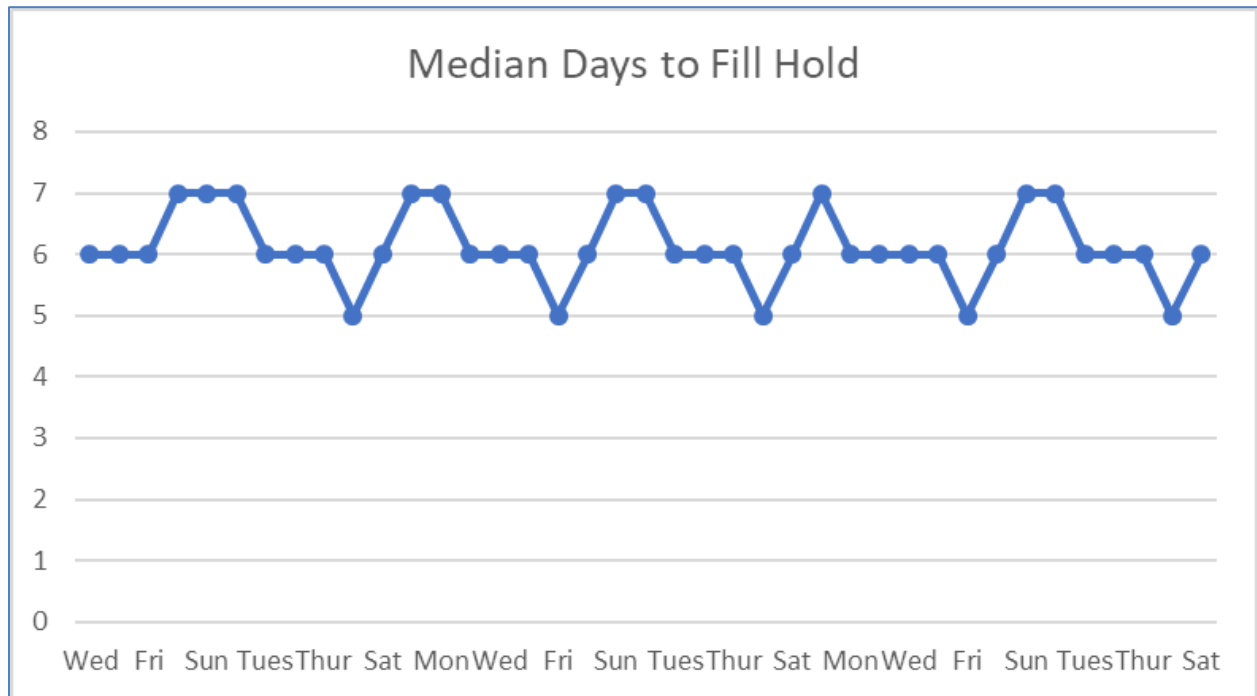
Again, our work in analyzing this information is to get the item into the hands of our patrons as quickly as possible. We will continue to evaluate data and look for additional efficiencies in holds processing.

Analysis from the testing period July 24 – August 31, provides the following overview:

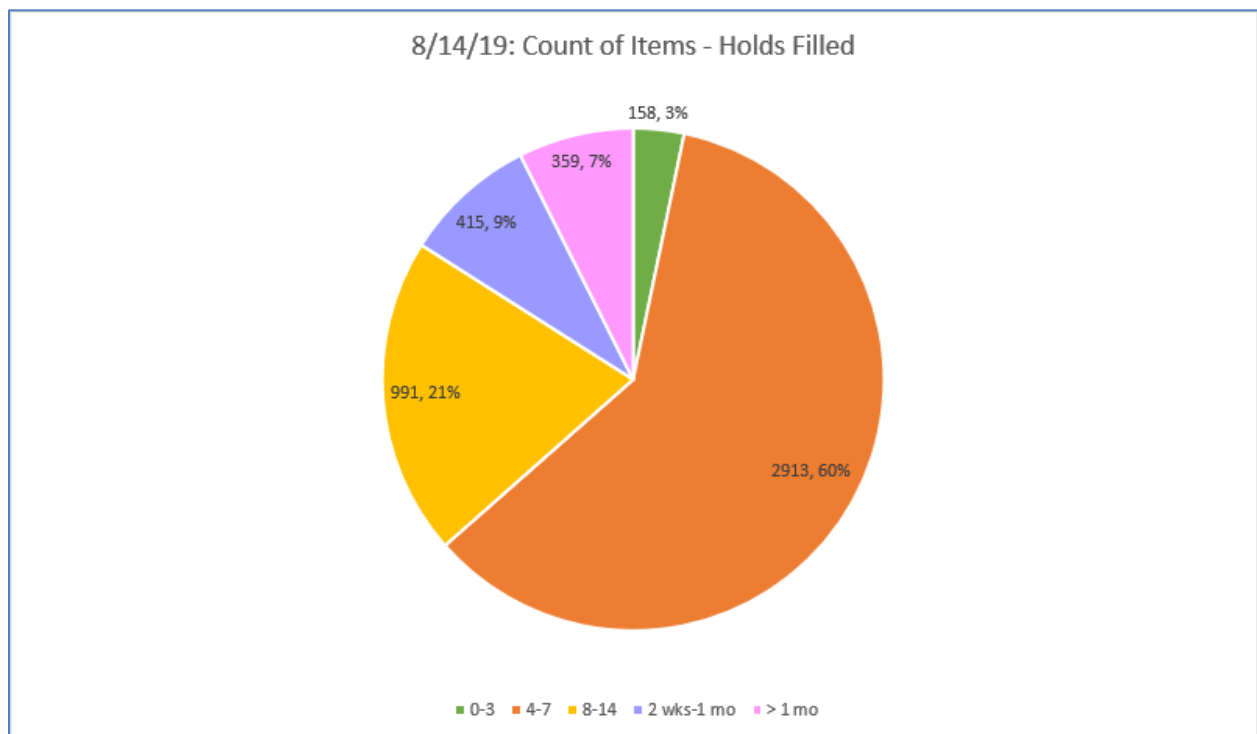
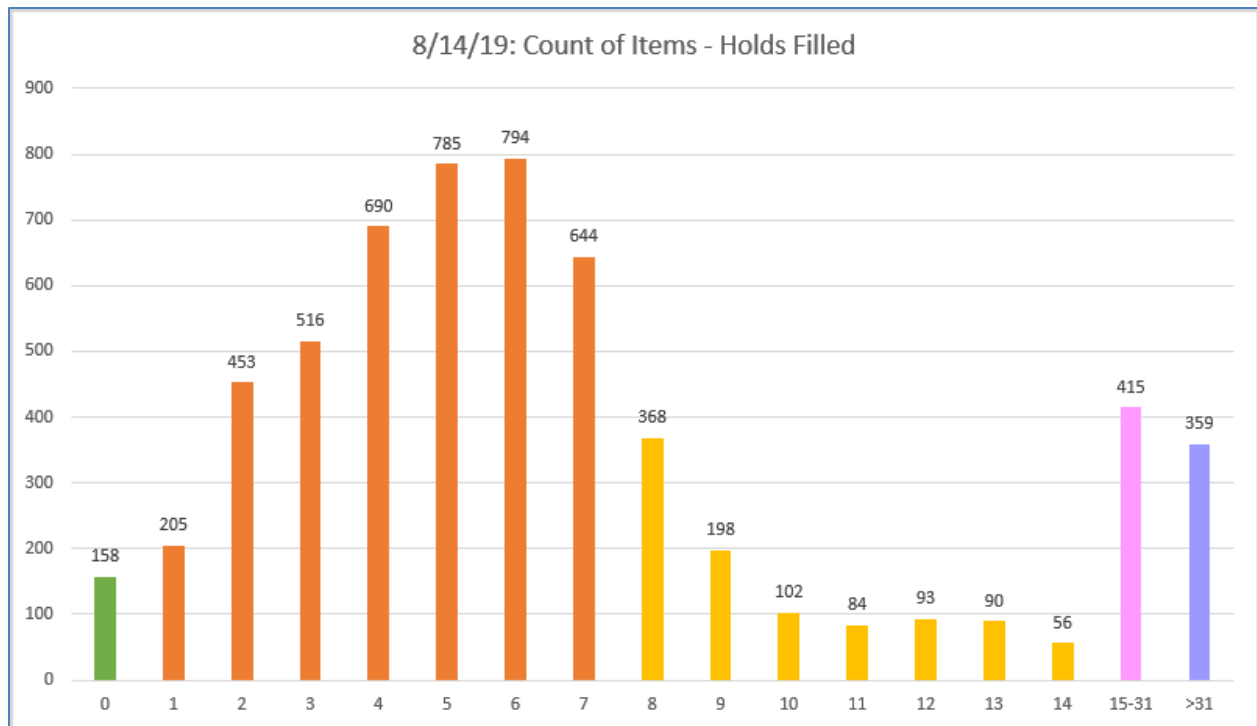
Average Days to fill hold request: 11.01



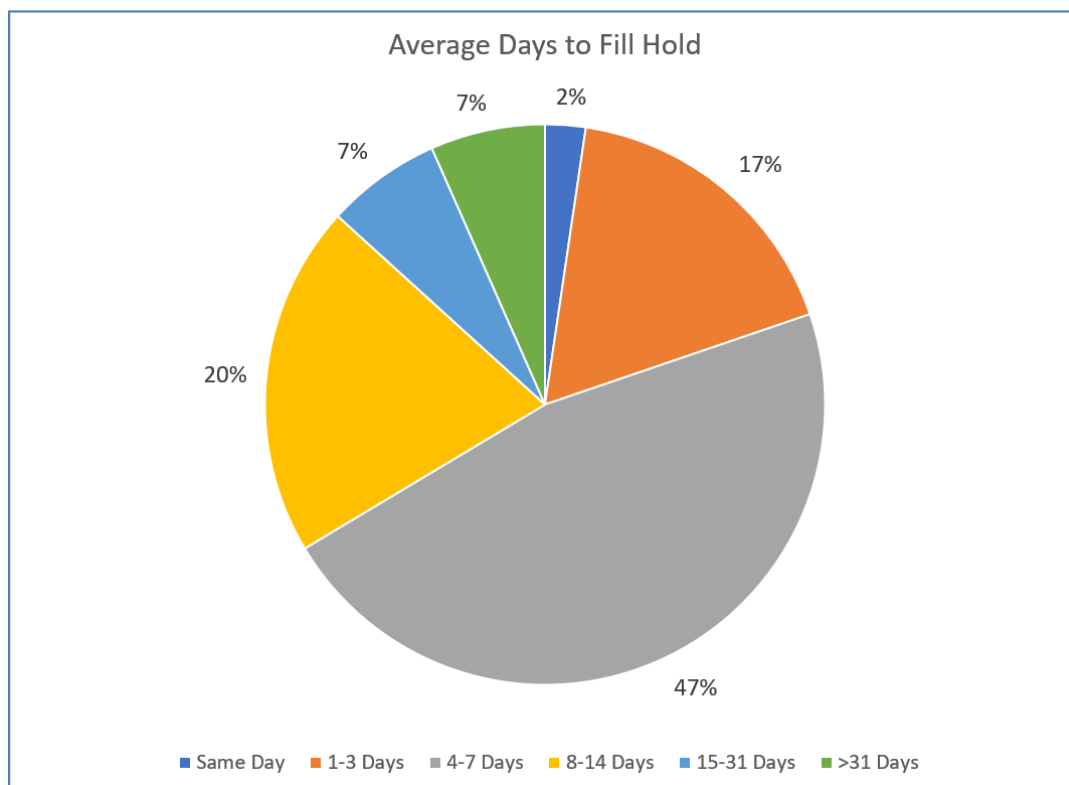
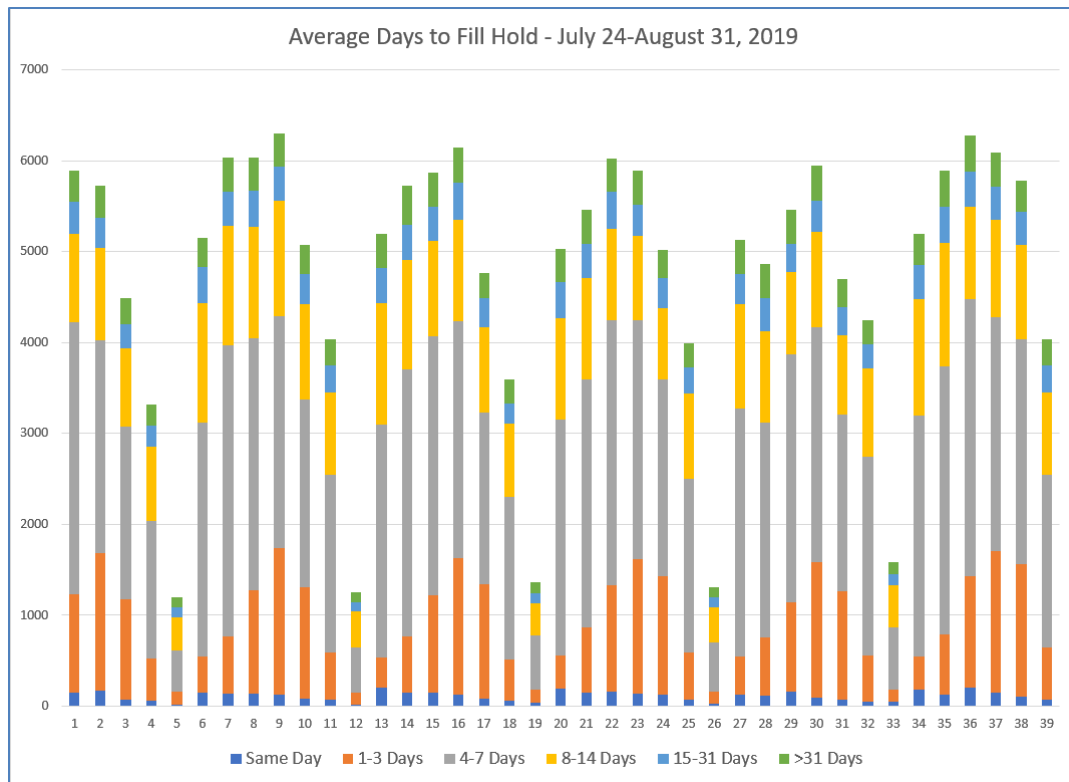
Median Days to fill hold request: 6



Reviewing a typical day's activity shows the distribution of days required to fill a hold request. August 14, 2019 shows that 63% of holds requests are filled within one week, 84% within two weeks, and 93% within a month. Those requests requiring more than 1 month to fill are typically related to on-order item holds, new titles with long hold queues, and suspended holds (e.g. Book Clubs).



This daily trend held steady across the entire testing period. During the 39-day testing window 66% of holds requests were filled within one week, 86% within two weeks, and 93% within a month.



SWAN Bibliographic Services (Scott Brandwein)

Cataloging Advisory Group

The last Cataloging Advisory meeting took place August 22nd. Most of the topics tied into one another. We discussed the final plan for handling Blu-ray/DVD combo packs, which will be released widely the week of 9/16 pending the completion of some supplementary documentation. SWAN also presented some changes to how we must handle standard numbers to reduce duplication and cut down on cases of bibliographic record loads to overlay unintended records. This was detailed to the group but still needs to be documented. It will be distributed alongside the updated standards for bibliographic description that the Cataloging Standards Task Force is working on.

Notes to the meeting are available on the support site. The next meeting is Thursday, November 14th and the RAILS Burr Ridge Main Meeting Room.

OHM (OSMOSIS Replacement) Update

The SWAN team has started testing the OCLC API tools in earnest and are currently determining where in the current plan we can use these tools to streamline the process. Interest in using the API varied between consortia at our last meeting, so the tool may require scaling based on what access various consortia have at their disposal, but SWAN will continue to design OHM to be as robust and simple to use as possible.

In addition to their OHM application, the OCLC API may have potential as a tool to enhance our catalog with updated information from the OCLC database that may have been added since we exported our MARC records. Once OHM is underway, Bibliographic Services will start investigating the potential in this arena.

Cataloging Standards Task Force

The Cataloging Standards Task Force had our last meeting on September 5th, though this was not the end of the group. Bib Services is drafting all of the group's conclusions into support site documentation that will require some revision. Once the drafts are complete, the group will take a couple of weeks to answer some small pending questions, smooth out the language, and ensure the presentation is palatable for member staff to interpret. This will take place remotely, via e-mail and our online forums.

Around the beginning of October, the drafts will be made live on our support site with the expectation that member staff familiarize themselves with the updated standards and start implementing them within the following weeks. Again, the standards are in large part meant to reflect the existing minimal cataloging standards of LC, OCLC, and RDA and should therefore reflect what many catalogers are already doing. But because there are some special considerations for working in a consortium as large as ours, there are some additional guidelines that may require adjustment. The Task Force is made up of managers and catalogers from many of our member libraries. They were sensitive to the need for efficiency and workflow/staffing flexibility, so we do not believe these guidelines will be an undue burden on SWAN member staff.

Cataloging Counts: SWAN Bibliographic Services

Counts do not include nineteen cataloging libraries. Original cataloging counts are new records created for SWAN and added to the OCLC WorldCat database. Copy cataloging counts are records downloaded from OCLC and added to SWAN's bibliographic database.

For August, there were 170 upgrades of minimal level records in OCLC to full records.

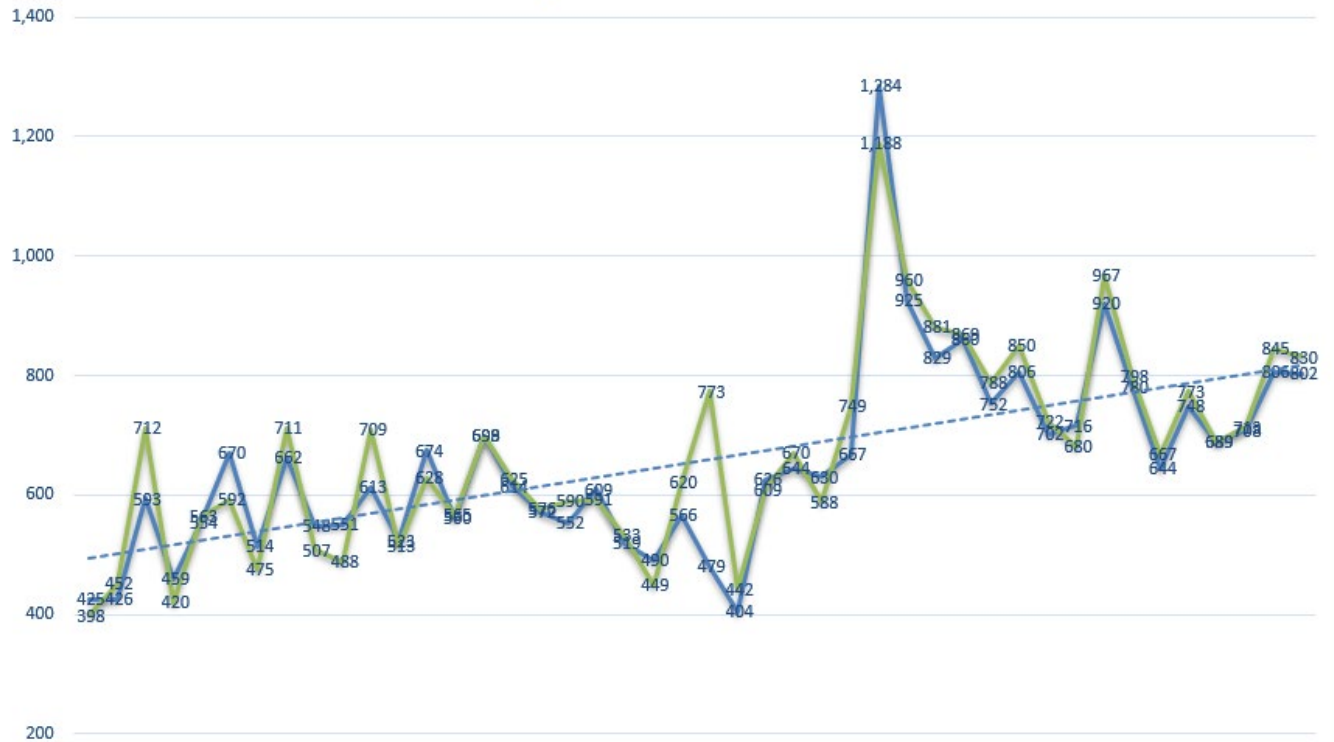
	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Orig 2017	96	132	169	131	133	209	266	184	96	195	93	112	1,816
Copy 2017	3,133	3,616	3,203	3,576	3,456	2,954	3,848	4,856	3,031	3,135	3,392	4,054	42,254
Orig 2018	122	89	147	70	119	148	118	167	116	209	194	92	1,591
Copy 2018	3,896	3,348	5,157	4,614	2,851	1,493	2,138	2,459	2,010	1,866	1,376	2,056	33,264
Orig 2019	126	82	106	211	92	163	127	175					
Copy 2019	2,565	1,952	1,939	2,352	2,032	2,070	1,672	1,872					

SWAN IT & System Support Services (Steven Schlewitt)

Support Tickets

As of September 13th, 68 tickets are currently open. Notable support inquiries this month involved Lynda.com subscription support and 14 circ/hold map changes for various libraries.

SWAN Support Tickets 2016-2019



General Projects

- Extended patron info consolidation in Symphony (Guardian field) – Dave
- Custom Long Overdue Report troubleshooting – Vickie
- Cancelled on-order items custom patron notification – Rudy, Ian
- Acquisitions fiscal cycle cleanup – Vickie
- Options for SWAN-internal CRM research – Steven
- Coordination of Asana cleanup with SWAN managers – Steven
- PFS SonicWall End of Life hardware upgrade – Rudy, Michael
- SWAN Discourse Forums pilot expansion to SWAN Tech, RFID – Steven
- Updates to RFID user group, addition of co-chair – Ian, Steven
- Follow-up and updates to Symphony Days Closed calendar – Vickie
- Online Patron Registration development – Rudy, Dave
- Project X / OHM research and development – Rudy, Dave
- On-Shelf Holds custom report development – Rudy

Lynda.com / LinkedIn Learning Platform Migration

Several libraries submitted tickets this month regarding notice they had received from Lynda.com, indicating that Lynda is migrating to the new LinkedIn Learning platform and they are no longer supporting secured Shibboleth Single Sign-On (OpenAthens in SWAN). Steven, Ian, Rudy, and Robin (UX) have been extensively involved with Lynda on this project, working to instill several SWAN standards in Lynda's integration with our libraries.

1. We're working to ensure that patron authentication will be handled in a secure method. To accommodate the immediate needs of our libraries, Lynda will shift back to SIP2 authentication, but we're working with Lynda engineers to move to secure Web Services authentication by Q1 2020.
2. Lynda.com / LinkedIn Learning is reviewing the SWAN Vendor Access Policy, which seeks to ensure authentication and the handling of data consistently meets SWAN's standards moving forward.
3. We're establishing standard lines of communication with Lynda staff. As there are a handful of Lynda account managers representing SWAN libraries, communication and coordination of projects have often proven difficult. A single point of contact with Lynda will create a stronger partnership for our libraries.
4. Alongside Lynda support, we're working to establish a process of supporting our libraries in their migration to the LinkedIn Learning platform. As the process can be cumbersome, Robin (UX) will work with the IT team to aid our libraries.

Email Notice Tracking

As of September 13th, SWAN sent 468,942 emails from the Symphony server over the previous 30-day period and observed a delivery success rate of 92.28% (432,719), with 0.13% (600) of those emails bouncing due to a patron email issue and 0.00% (21) of those emails reported as SPAM by the patron.

As the monthly success rate is 6-7% lower than usual, we've investigated the matter further and were unable to find anything in the stats to indicate a specific delivery issue, nor did we find any large clusters of undelivered emails. We've escalated the matter to SendGrid support believing it could be an error in the stats reporting and are awaiting response.

Outage Tracking

Date	Time	Elapsed (Min)	Service	Planned?	Lib Hours?	Reason
8/22/2019	20:53	5	Enterprise	No	Yes	Unknown Enterprise outage
8/31/2019	11:57	10	Enterprise	No	Yes	Web services outage and restart due to search load spike
9/9/2019	10:12	5	Enterprise	Yes	Yes	Enterprise service restart to troubleshoot harvest issue

SWAN User Experience (Tara Wood)

Trainings

Lauren Levaggi lead a training in using the BLUEcloud Mobile app administration interface. Robin Hofstetter lead a training in Article Search. Tara Wood co-lead a training in using Enterprise and Workflows to assist patrons, with Scott Brandwein.

BLUEcloud Mobile

The BLUEcloud Mobile app was updated this week. Details are available on the SWAN support site. Among the enhancements with this release is a better error message for patrons that mis-enter their PINs.

In addition, a recent update to the BLUEcloud Mobile administration portal allows library staff to enter translations for their custom content in the BLUEcloud Mobile app. This means that they can provide manual translations in Spanish, Polish, and other languages to better serve your communities. Updated documentation is on the SWAN support site.

Public Service Desk Observations

Crystal Vela and Tara Wood are visiting Eisenhower Public Library, Hinsdale Public Library, and St. Charles Public Library to observe staff on public service desks and conduct interviews with public services staff. These visits are part of our research into BLUEcloud Circulation. We are looking for areas where library staff may be able to use this tool now or in the near future to improve their workflows in circulation, adult services, and youth services. Thanks to our BLUEcloud Circulation research team for arranging these visits!

Outreach

We have two new outreach libraries this month, Lansing Public Library and Indian Prairie Public Library. Crystal Vela visited both libraries to train and work with them on their Outreach configuration.

Lynda and LinkedIn Learning Authentication

Lynda.com is migrating to LinkedIn Learning, and they are no longer supporting authentication through OpenAthens. Robin has been working with the ITSS team and LinkedIn to set up authentication through Web Services and ensure that our libraries do not see an interruption in access.

SimplyE Pilot

Robin is currently working with Green Hills Public Library to pilot SimplyE, an app developed by the New York Public Library to simplify the eBook borrowing process. More updates to come!

Discovery and User Experience (DUX) Advisory Group

In the August meeting, DUX discussed improvements to search relevancy based on title. SWAN worked with SirsiDynix to improve title search relevancy in Enterprise for short titles, for example: Little, 2019 movie; It, by Stephen King; and Smile, by Raina Telgemeier.

In addition, the group discussed conducting usability testing in November on the eBook download process and participated in a paper prototyping activity to improve the experience of downloading e-materials from Enterprise.

Circulation Advisory Group

The Circulation Advisory Group will meet this month to brainstorm potential improvements and changes to the Circulation Policy. The elected members of the group will participate in several brainstorming activities designed to elicit high-level discussions around billing, privacy, user accounts, and holds, with a focus on both library staff and library patron interactions with the policy. Due to the nature of the activities, this meeting will be closed to visitors. SWAN staff will take the results of this session to develop a proposed policy to present at the next Circulation Advisory Group meeting.

SWAN
Calendar-Timetable of Deadlines and Board Action Requirements

DATE	MEETING TYPE	ACTION ITEMS
Monday, July 1, 2019		SWAN FY20 Budget goes into effect.
Friday, July 19, 2019	Regular SWAN Board Meeting	Elect Officers: President, VP, Treasurer, Secretary & Complete Signature Card Changes for Bank Accounts. OMA Officers must complete training. Nominate for committees. Board self-evaluation.
Thursday, August 1, 2019		LLSAP Grant application package due to RAILS
Friday, August 9, 2019	Regular SWAN Board Meeting	CANCELLED
Friday, August 16, 2019	SWAN Expo	Annual conference at Moraine Valley Community College
Friday, August 23, 2019	Regular SWAN Board Meeting	Discussion with Secretary on Closed Session Review
Thursday, September 5, 2019	Quarterly	Introduce new SWAN Board members
Friday, September 20, 2019	Regular SWAN Board Meeting	Closed session minutes 6 month review Identify SWAN policies to review. Review budget process timetable with SWAN Board.
August–September 2019		RAILS reviews LLSAP grant applications and determines awards
Tuesday, October 1, 2019		RAILS responds with award letter and grant agreement
Friday, October 18, 2019	Regular SWAN Board Meeting	Aaron begins work on FY21 budget, brings questions to SWAN Board if needed.
November [TDB]	Finance Committee	Aaron Skog and Treasurer review Budget; SWAN potential policies are reviewed.
Friday, November 15, 2019	Regular SWAN Board Meeting	Board accepts FY19 audit.
		Aaron to bring FY20 Budget draft; Board discuss Fees and determines next steps.
		Set Board approves meeting dates for 2020 calendar.
Thursday, December 5, 2019	Quarterly	Announce FY21 Budget Process
Friday, December 20, 2019	Regular SWAN Board Meeting	Review of FY21 Budget Draft.

SWAN
Calendar-Timetable of Deadlines and Board Action Requirements

DATE	MEETING TYPE	ACTION ITEMS
		Approve FY21 LLSAP grant agreement
Wednesday, January 1, 2020		Signed LLSAP grant agreements due to RAILS
Friday, January 17, 2020	Regular SWAN Board Meeting	Review and recommend draft of SWAN Budget for Membership presentation. Set COW date for February for membership review.
		Recommend Draft of SWAN Budget for Membership Presentation. Set Budget Meeting date for February for membership review? Review Succession Plan for ED.
		SWAN Board reviews and adopts strategic plan.
January 2020 [TBD]	SWANcom	Board present draft budget to membership.
	SWANcom	Aaron Skog/Board announcement of draft budget to membership. Set February COW date and possible location of meeting.
February 2020 [TDB]	Membership Meeting	Meeting to discuss FY21 budget, fees, and reserves worksheet.
Friday, February 21, 2020	Regular	Incorporate changes, suggestions to SWAN budget. Create recommendation to membership. SWAN Board Election Process Review.
		Review Board Election Timetable.
		Yearly review of SWAN Bylaws; establish committee if needed.
		Closed session minutes 6 month review.
Thursday, March 5, 2020	Quarterly	Roll call vote to approve SWAN budget. Announce Board election process.
Friday, March 20, 2020	Regular SWAN Board Meeting	Determine if Finance/Personnel Committee meeint is needed.
March 2020 [TBD]	Finance Committee/ Personnel Committee Joint [if needed]	SWAN potential policies are reviewed. Yearly Employee Handbook review based on employment law requirements/recommendations.
Friday, April 17, 2020	Regular SWAN Board Meeting	Review and approve Board Self Evaluation Form; assign date for completion.
		Review proposed Bylaws changes (if any). Vote on recommendation to membership; send out SWANcom notification of amendment.
May 2020 [TBD]	SWANcom	Announce election info.

SWAN
Calendar-Timetable of Deadlines and Board Action Requirements

DATE	MEETING TYPE	ACTION ITEMS
Friday, May 15, 2020	Regular SWAN Board Meeting	Review Board Self-Evaluation Results.
		Director Evaluation - Review document in preparation to complete for June. Assign deadline for completion.
Thursday, June 4, 2020	Quarterly	Board Election Results. Vote on Bylaw amendments (if any).
Friday, June 19, 2020	Regular SWAN Board Meeting	Review/Write Off Allowance for Doubtful Accounts
		RAILS provides FY22 consortial support grant applications to consortia.
		Director Evaluation - Provide results and discuss (Executive Session).
Tuesday, June 30, 2020		OCLC State-wide Group Services Agreement Ends
Wednesday, July 1, 2020		SWAN FY21 Budget goes into effect
		FY21 RAILS LLSAP grant payments and in-kind services begin
Friday, July 17, 2020	Regular SWAN Board Meeting	Elect Officers: President, VP, Treasurer, Secretary & Complete Signature Card Changes for Bank Accounts. OMA Officers must complete training. Nominate for committees. Board self-
Sunday, January 31, 2021		FY21 LLSAP Grant semiannual reports due to RAILS

SWAN 501(c)3 Study: Summary & Update

September 19, 2019 SWAN Board Meeting
Aaron Skog, Executive Director

Introduction & Overview

This is a written update for the SWAN Board on the activities to-date as they pertain to SWAN strategic plan “Strategic Plan Initiative #3: Reconstitute as a Mission Driven 501(c)3 with Clear Representative Governance Practices.” This interim report summarizes legal research and provides some additional research into library consortia similar to SWAN which are 501(c)3 entities.

1. Current SWAN structure
2. Strategic Plan Initiative
3. Legal research to-date
4. Known impact on SWAN
5. Research on how other 501(c)3 library consortia govern
6. Consortia data comparison
7. Board discussion questions

Current SWAN Entity & Governance Structure

SWAN is an Illinois Intergovernmental Instrumentality established under Act 5 ILCS 220/1, entitled the Intergovernmental Cooperation Act. The entity follows OMA and FOIA in practice (see details under legal research).

The SWAN membership agreement is an intergovernmental agreement. This agreement was created in 2010 and has been approved by all libraries in SWAN without modification. The intergovernmental agreement effectively establishes SWAN under the Intergovernmental Cooperation Act. Libraries that wish to modify the agreement cannot, as this agreement establishes SWAN.

SWAN’s Bylaws are available [online via the SWAN support site](#). These bylaws have been revised from time to time, which requires 30 days posting of recommended revisions and must be approved by membership in-person at an OMA compliant meeting. The SWAN Bylaws define what requires membership voting for approval of budget/fees, joining fees, new libraries, and dissolution of SWAN.

The SWAN 7-member board is elected at-large among the library directors or library administrators. The eligibility and election is defined in SWAN’s Bylaws. The at-large arrangement has been in place since 2012. The prior representation arrangement was by “library size” representation (the A, B, and C categories of libraries, which in actuality was based on thresholds of SWAN membership fees). The size representation model was preceded by a geography model via geographic “zones” where SWAN representatives were appointed to an advisory council (this was when SWAN was still a department of

the library system which utilized geographic zones). Both prior models were found to be unsatisfying or cumbersome (due to OMA, preponderance of meetings, etc.).

Concerns about library directors being disengaged in SWAN has been somewhat persistent. SWAN does not require attendance at director level meetings, while other consortia such as PrairieCat require attendance and assess penalties for non-attendance. The previous SWAN strategic plan included an initiative to seek out non-engaged library directors through a group of 12 directors who arranged site visits. This 2014 initiative was called the Ambassador Program. Suggestions for remote meeting attendance were raised by the membership at the March 2018 Quarterly meeting.

Strategic Plan Initiative #3: Reconstitute as a Mission Driven 501c3 with Clear Representative Governance Practices

Rationale

A 501c3 organization will more clearly express a mission-centric identity than an “intergovernmental instrumentality.” For the 501c3, a mission statement around an overarching “public good” is definitional. For an Illinois Intergovernmental Instrumentality, the “governmental” identities are definitional.

The “public good” requirement of a 501c3 reinforces the explicit inclusion of patron experience into a new mission statement. Practically speaking, becoming a 501c3 removes burdens hampering current governance such as insufficient quorums and barriers to participation (i.e. requirement to be physically present at meeting; prohibition of email as vehicle of decision-making). Another practical advantage will be to support grant seeking (Objective 6) as 501c3 is a more natural and understandable fundraising vehicle.

Reconstituting as a 501c3 provides a context for exploring new governance policies and practices which could include:

- Designated board seats by type, geography, size
- Term limits by libraries (not just by individuals)
- Expanding the number of board seats

Representative democracy sometimes means a board member must hold the proper tension of representing some defined constituency AND the greater public good – like a legislator.

Markers

- Board committee is formed to draft a new set of bylaws for 501c3 incorporation that addresses the representation issues.
- Executive Director completes study investigating all relevant implications and proposes an execution plan.
- Vote is taken.

- Plan is executed.
- Process is developed for SWAN staff to spend more time onsite at member libraries to serve as “eyes and ears” on behalf of the board, giving members greater confidence that their interests are being represented.
- New board is constituted. There could be overlap with current composition, but there is a true “reboot.”
- Purpose and structure of all member meetings (whether quarterly or some other frequency) is clarified and communicated to the membership.
- Invest in board development and training, especially in this transition process

Guiding Principles

This objective should underline the collective mentality required of the new board members: that when they enter that role, they are acting as a representative of the interests of all the members and their patrons – not representing their own library.

The board must also commit to owning their authority and resist temptation to push things to mass member decision making. However, opening more channels to gain informative input from members should be done.

Research & Findings

Legal Opinions

There are four legal opinions that are the foundation of the legal research to-date. The first is from 2014, regarding application of FOIA and OMA to Intergovernmental Entities. The second is the Illinois Open Meetings Act and Membership Voting, which we obtained in 2018. The other two opinions are from this year, which SWAN requested on the implications of converting SWAN from an Illinois Intergovernmental Instrumentality to a 501(c)3.

Summary of the Legal Findings: 4 Written Opinions

1. Illinois Intergovernmental Instrumentalities like SWAN, CCS, and PrairieCat were legally advised to follow OMA and FOIA in 2014, despite some uncertainty if these laws apply to these types of entities.
2. SWAN bylaws and OMA define membership voting and restrict remote attendance. Remote attendance could be accommodated with additional written rules for participation or through amending the current bylaws. The bylaws also define the methods for amendment.
3. If SWAN were to convert to a 501(c)3 entity, there are conditions where the SWAN organization could be found to be a “public body” i.e. a governmental entity, and thereby must comply with OMA and FOIA. The 6-page legal opinion details case law and establishes a framework for SWAN to avoid being legally viewed as a public body. The bylaws would need to be rewritten to avoid

functioning as a public body. SWAN would create a new service agreement and eliminate the need for the intergovernmental agreement.

4. The SWAN Board composition would need to undergo a change in composition if SWAN wished to avoid the areas of OMA and FOIA compliance. Board membership is not the sole determining factor, but it is an important factor to consider. The legal opinion suggests a blend of representatives from public library members and board members with no direct affiliation with public library members. Having a composition where the majority of the board having no public library affiliation would likely ensure SWAN from being found to be a public body. Having a governing board with the smallest ratio of public libraries to non-representatives would be the optimal composition if SWAN desires to stay as far away from being classified as a public body under FOIA and OMA.
5. SWAN as a 501(c)3 would be able to accept tax deductible donations. The May 3, 2019 legal opinion specifies that SWAN currently as an Illinois intergovernmental instrumentality could not accept donations (although the attorney does offer to explore this further if desired).
6. The option to convert first and decide on SWAN's governing board restructure in a few years' time as we establish and assess the actual benefits of converting to a 501(c)3 was clarified by SWAN's legal counsel. Should the board composition not change from the current arrangement, SWAN could exist as a nonprofit 501(c)3 entity that would very likely be a public body subject to the OMA and FOIA. It is possible for SWAN to be both a 501(c)3 and subject to the OMA and FOIA.

Known Impact of SWAN Converting to 501(c)3 Entity

As of this September 2019 report, these are the known impacts.

Health insurance benefits: SWAN would no longer qualify for membership within the health insurance program with LIMRICC. Health insurance benefits would have to be provided through some other means.

ICMA-RC employee benefit: SWAN would no longer be able to contract with ICMA-RC for the employer based 401a plan or offer the 457b and Roth IRA plans to its employees through ICMA-RC.

Software cost savings: there would be some cost savings with some of the vendors SWAN currently uses. Microsoft Azure is one of them, which estimates a \$3,500 discount on what we pay currently (more than 1 month of our current Azure expenses). We would need to contact all of the existing vendors SWAN uses to see if other discounts apply. Options such as Salesforce NFP or Microsoft Dynamics as customer relationship platforms would be less costly.

Donations & Fundraising: the strategic plan objective 6 states SWAN should "Seek external funding options to support the research and development initiatives of SWAN. The rationale behind this objective is "we want to keep membership fees low while embracing innovation."

Internal Revenue Service filings: IRS Form 1023 – Application for Recognition of Exemption. This form will includes basic information about the nonprofit, compensation arrangements with officers, directors, trustees, and employees of the nonprofit, and a variety of other details about topics ranging from familial relationships between key personnel to joint ventures with other organizations;

IRS Form 990 – Return of Organization Exempt from Income Tax. This form reports the information that would otherwise be reported for income tax purposes if the nonprofit were not exempt from paying income taxes. This form includes details regarding received contributions, grants, revenues, etc., salaries, and expenses.

Library Resource Sharing Consortium that are 501(c)(3)

The following is a selection of library resource sharing consortia in the US which are 501(c)3 entities. Please note, other types of library consortium exist which are not resource sharing consortia—these other types of library consortia provide group purchases and other services similar to Illinois library systems. The resource sharing consortia were contacted to determine the following:

- Board composition
- Fundraising
- Executive director responsibilities
- Membership agreement
- Bylaws
- Applicable local & state laws

The answers supplied are directly from the four consortia executive directors who responded to SWAN's request.

Old Colony Library Network, Braintree, MA

David Slater, Executive Director

Total population served by consortium libraries: 709,000

Number of Libraries: 29

Annual Consortium Circulation: 4,700,000

Is your governing board solely made up for representatives from the libraries that are customers of OCLN? Are they elected, appointed, or hand-picked?

OCLN is 28-member library consortium. The Executive Board has 9 representatives from the Membership. All board members are library directors. No one from outside the membership serves on the board. Library Trustees and members of the public DO NOT attend our Board and Members Council meetings.

Does OCLN governance participate in any fundraising activity as an additional source of revenue?

OCLN does not do outside fund raising. As a 501(c)3 are eligible to accept donations. There have been a few situations in the past where members of the public have made small unsolicited donations.

Does the OCLN Executive Director have control over its financial operations such as paying all bills, negotiating all service contracts, etc.?

As ED I am responsible for reviewing all invoices and authorizing payment. Typically, the Treasurer (a board officer) signs all checks.

- I am authorized to sign checks up to \$6,000 in the event the treasurer and other officers are unavailable to sign.
- I sign all payroll.
- I sign checks for the e-commerce payments that are collected on behalf of the member libraries.
- I hold a credit card with a \$10,000 limit mostly for travel and incidentals and some large recurring items (Comcast Internet for member libraries.)
- I serve on the Finance committee as a non-voting member and coordinate fund transfers with our financial advisor and banks.
- I negotiate all contracts on behalf of the network, once finalized, contracts come before the Board for a vote. Multi-year contracts require a 2/3 vote of the full membership for approval. It would be unusual for a Board Member to be involved in a contract negotiation.

Do you have a service agreement that libraries sign when they join? Is this renewed on a periodic basis? Is this agreement revised or negotiated separately with member libraries of OCLN? Are you able to share this agreement template?

We have an agreement that members sign upon joining. A copy is attached. Please note that this document dates back to the founding days of the network (mid-1980's) before we had an ILS and when the majority of members joined. Since 2000 we've had only 4 libraries join.

Can you provide a copy of OCLN's bylaws?

Our bylaws are currently being revised and updated. I expect they will be approved in late October.

Do you have state laws which require OCLN to comply with areas such open meetings/open government, freedom of information requests, etc.?

We are a private 501(c)3 organization. As such there is no requirement that we comply with open meeting laws, freedom of information laws, etc. Our state library agency, Mass. Board of Library Commissioners (MBLC) provides grant funding. To ensure accountability, we provide the MBLC with annual financial reports. Once in the custody of the MBLC, those financials become part of the public record. We do have to comply with US and Massachusetts Department of Labor and IRS requirements for employee benefits (Health Insurance, 401k / 403b, etc.)

[SAILS Library Network, Lakeville, MA](#)

Kathy Lussier, Executive Director

Total population served by consortium libraries: 740,000

Number of Libraries: 66

Annual Consortium Circulation: 3,835,282

Is your governing board solely made up for representatives from the libraries that are customers of SAILS? Are they elected, appointed, or hand-picked?

Our Executive Board is solely made up of representatives from our member libraries. We also have minimum requirements based on population serviced, library type, and county. We have a nominating committee that looks for new Board members every year and pulls together the nomination slate. The slate is voted on by our Membership. We also accept nominations from the floor, but this rarely happens.

Does SAILS governance participate in any fundraising activity as an additional source of revenue?

Most of our revenue comes from membership assessments and annual grants from our state agency. We have an Amazon Smile account, but it usually brings in less than \$100 a year. We don't engage in other fundraising because we don't want to "compete" with fundraising done by our member libraries.

Does the SAILS Executive Director have control over its financial operations such as paying all bills, negotiating all service contracts, etc.?

We manage the finances, but we require Board approval to expend funds. We issue a warrant listing all of the checks to be paid that month to the Board shortly before its monthly meeting. The Board approves this warrant at the meeting. Two officers also sign off on the warrant. If the Board does not meet in a given month, we send the warrant out via email and give them a couple of days to respond before issuing checks. The checks must be signed by an officer, but we get signatures from two officers on most of them. The only checks the Executive Director signs are the eCommerce checks we send to libraries to reimburse them for the funds we collected on their behalf through BC Commerce. The Executive Director negotiates most contracts, but I expect a negotiation committee is pulled together for larger contracts. For example, our SirsiDynix contract is up in October 2020, and I plan to pull together a committee to work on negotiations for the renewal (or for a replacement vendor if we decide to change). The Executive Director can sign contracts with the email approval of a Board officer. If it were a large contract, I would ask the President to sign the contract.

Talking with other consortia in the state, I think our setup is somewhat unique. I know there are some consortia where the Executive Director can sign checks and others where a Board officer must sign checks. However, I think we're the only one that issues a warrant that the Board must approve. I didn't come up with the system, but I like the transparency it provides.

Do you have a service agreement that libraries sign when they join? Is this renewed on a periodic basis? Is this agreement revised or negotiated separately with member libraries of SAILS? Are you able to share this agreement template?

Yes, we have a service agreement and also a PC support agreement for those libraries that participate in our optional PC support program. We renew these agreements annually at the beginning of the fiscal year. My understanding is that there are some towns that aren't allowed to sign a contract that extends longer than a year. All libraries sign the same, standard agreement. There are two municipalities that require us to sign a town contract and fill out some other paperwork in addition to our standard service agreement. Our Board President signs the service agreements. The Membership takes a vote at every annual meeting authorizing the President to do so.

I have attached a template of the agreement.

Can you provide a copy of SAILS's bylaws?

<https://www.sailsinc.org/Corpdocs/By-Lawsv2018.pdf>

Do you have state laws which require SAILS to comply with areas such open meetings/open government, freedom of information requests, etc.?

No, we have to comply with laws pertaining to corporations, but we are not considered a governmental agency. We, therefore, do not have to follow competitive procurement laws or open meeting laws. Although we provide email for our members, which include public libraries, we have an opinion from the state Attorney General that says we are not required to follow the public record laws regarding emails. Our libraries are responsible for backing up their own email to comply with public record laws.

Mid York Library System, Utica, NY

Wanda Bruchis, Executive Director

Total population served by consortium libraries: 293,634

Number of Libraries: 43

Annual Consortium Circulation: 1,606,450

Is your governing board solely made up for representatives from the libraries that are customers of Mid York Library System?

Yes. Trustees need to reside within our chartered to serve area. Are they elected, appointed, or hand-picked? Elected by our member libraries. If an individual leaves the board before his term, then the Mid York Library System board can appoint someone to finish the term.

Does Mid York Library System governance participate in any fundraising activity as an additional source of revenue?

No. State regulations prohibit us from putting a funding referendum on a ballot-we would then be in "competition" with our libraries because our chartered to serve area overlaps theirs, for the most part.

Does the Mid York Library System Executive Director have control over its financial operations such as paying all bills, negotiating all service contracts, etc.?

We have an 8-member Board. One seat is held permanently by our sole academic library member. One seat is a one-year term that rotates alphabetically through our membership. The remaining 6 seats are elected from our membership to serve 3 year terms.

Does LMxAC governance participate in any fundraising activity as an additional source of revenue?

No. We do no fundraising. We are funded by membership dues.

Does the LMxAC Executive Director have control over its financial operations such as paying all bills, negotiating all service contracts, etc.?

Yes, although check signing authority is with the Board Treasurer with the President and Vice President as back up.

Do you have a service agreement that libraries sign when they join? Is this renewed on a periodic basis? Is this agreement revised or negotiated separately with member libraries of LMxAC? Are you able to share this agreement template?

Our membership agreement is attached and is self-renewing. This agreement was signed by all members in 2016 replacing the previous interlocal services agreement between the county (which started us) and local municipalities and libraries. This agreement is directly between us and our members (the county and local municipalities are no longer involved).

Can you provide a copy of LMxAC's bylaws?

You can find our bylaws at:

https://www.lmxac.org/info/wp-content/uploads/2019/07/LMxAC_ByLaws_2019.pdf

We are about to start a review to update them since it has been a while.

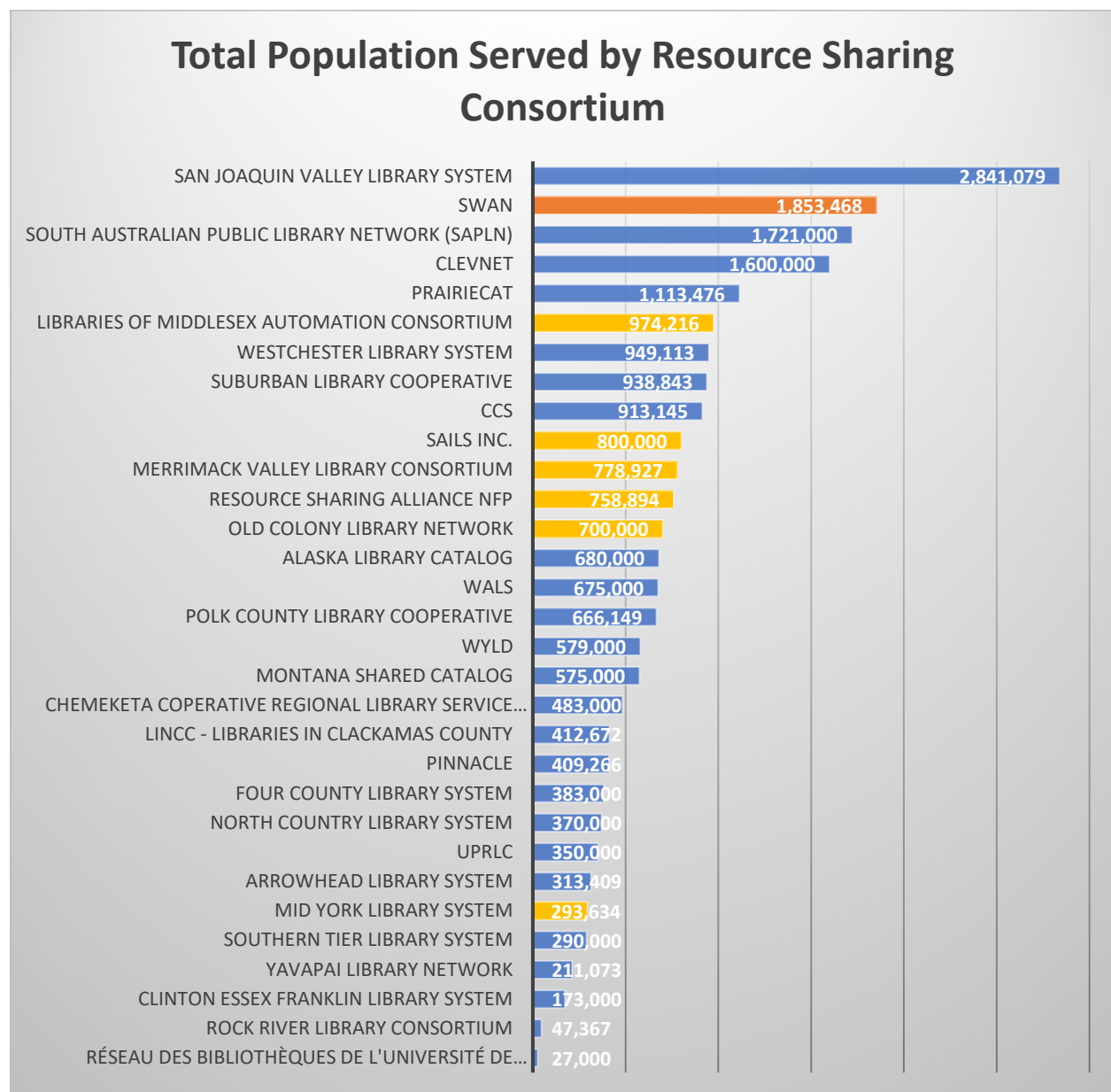
Do you have state laws which require LMxAC to comply with areas such open meetings/open government, freedom of information requests, etc.?

We do not, although it is our opinion that a court would require us to comply with freedom of information requests, so we have always done so.

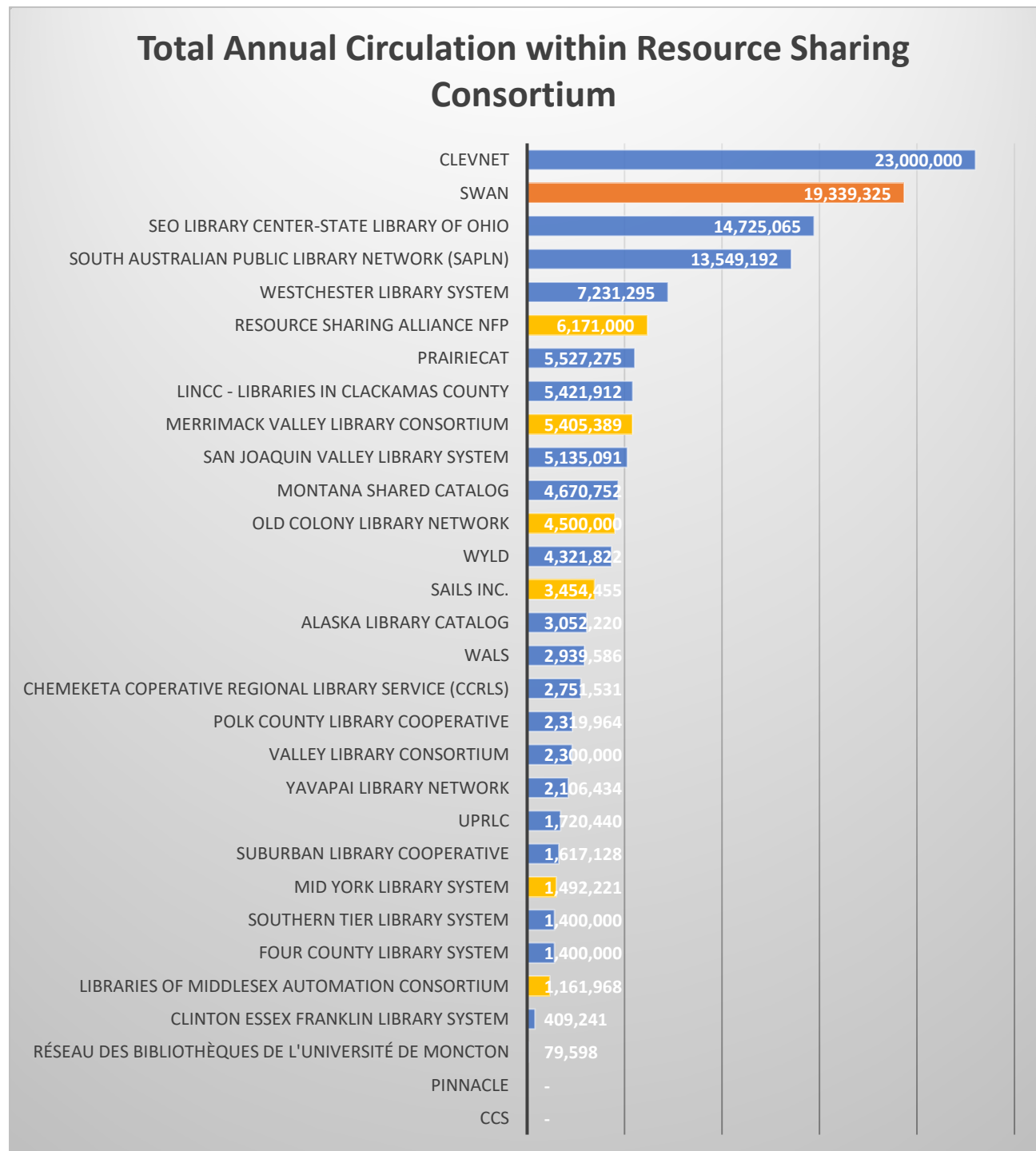
Comparing Consortium

Within this overview, it might be helpful to compare the various library resourcing sharing consortia. The size of SWAN when compared to others may require us to approach governance, board composition, and the entity with a different mindset after reviewing this comparative data. The 501(c)3 consortia are noted in yellow. The six RAILS LLSAP are included.

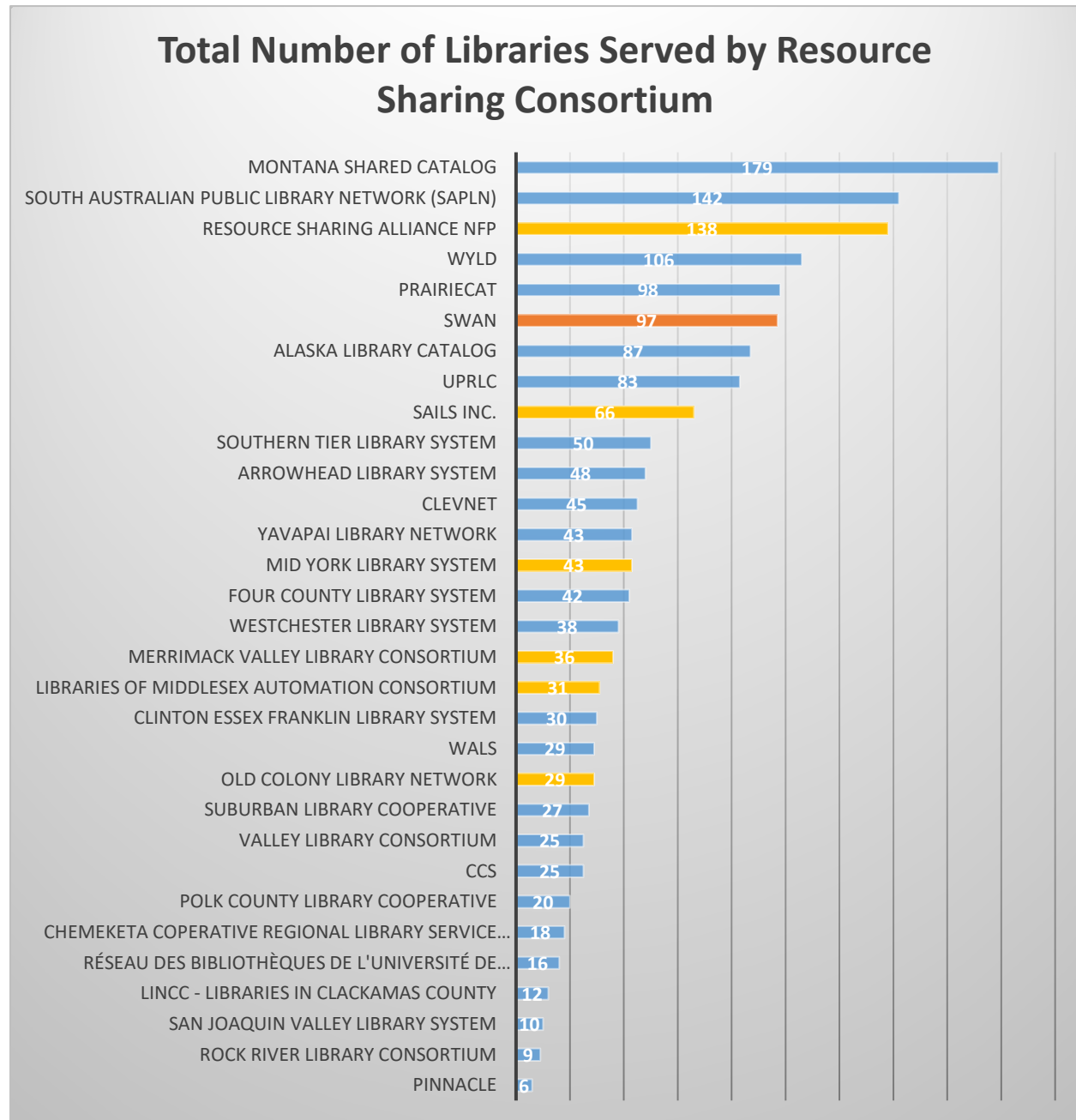
Population served: the population served by the total number of libraries in the consortium is an important metric to consider as this will indicate that higher population served by the consortium will affect the consortia through higher demand, etc.



Consortia Annual Circulation: circulation somewhat correlates to service population above. While consortia may have varying approaches to automatic renewals, renewal limits, etc. the circulation metric is a good indicator of consortium demand. Note: Pinnacle and CCS did not supply circulation data.



Library Counts: the number of libraries within a consortium does not necessarily include multi-branch or county systems, e.g. Oak Park Public Library has three buildings but it only counted as one agency in SWAN. Some library resource sharing consortia service the entire state and encompass a large geographic region with a many small libraries.



How Other Not-for-Profit 501(c)3 Board & Organizations Operate

The NFP organization will utilize bylaws approved by the board of directors. The bylaws would define the total number seated on the board of directors and how those directors are recruited or nominated.

NFP board of directors could be nominated and appointed by the NFP executive director. The executive director could also be a member of the board. The size of the board can vary depending on need. The board is legally responsible for governance, fiduciary, and strategic oversight of the NFP organization. They have an obligation to the donating public, funders, program recipients, and public community that the NFP stays on mission and operates effectively.

The executive director in assessing board prospects is responsible for ensuring the board member has a passion for the mission of the organization. These prospects should have business skills and be willing and able to help make financial decisions. Integrity and valuing the compliance and transparency of the organization are also key.

The board of directors should function as a unit with range of skills and experience. Ideally the board should represent a diversity of skills that will help support all areas of the NFP—fundraising, governance and programs. Family members and business associates cannot make up a majority of the NFP board.

Funding of the NFP can come through income from services, donations, and grants. NFP organizations should establish strong relations with donor groups. This requires a donor marketing strategy.

Other insights of interest to NFP are concepts such as “founder’s syndrome” which is where one or a group of founders maintain disproportionate power and influence over the future direction of the organization.

Resources

Starting & building a nonprofit: a practical guide, Author: Pakroo, Peri. Edition: Fifth edition. ISBN: 9781413318470

Managing the non-profit organization: practices and principles; Author: Drucker, Peter F. (Peter Ferdinand), 1909-2005. ISBN: 9780060851149

A Refresher on Not-for-Profit Board Governance. Author: Patricia A. Johnson, April 2019, The CPA Journal

If you love something, let it grow: Overcoming founder’s syndrome, Author/Byline: Michelle Maynor Fairbanks Daily News-Miner (AK) - March 17, 2013

Discussion Topics for the SWAN Board

1. What are the concerns of having a hybrid SWAN governing board of existing library directors and non-public library representation?
2. As noted in the strategic plan, for the 501c3, a mission statement around an overarching “public good” is definitional. For an Illinois Intergovernmental Instrumentality, the “governmental” identities are definitional. Can SWAN achieve the “public good” mission without a change in the governing board composition?
3. Is the priority of the organization to ensure that a loss of funding through the State of Illinois/RAILS (currently \$524,679) does not dramatically affect the operations of SWAN or prohibitively increase the membership fees to make up for the revenue loss?
4. Keeping in mind “Objective 6: Seek External Funding Options to Support the Research & Development Initiatives of SWAN. Rationale: We want to keep membership fees low while embracing innovation.” Would a 7-member library only board be able to assist with fundraising activities or is the expectation this would be activity of the SWAN Executive Director or specific positions in SWAN?
5. How important is it to retain voting on budget by member library directors? Is this more of a membership engagement issue? Is the expectation that voting achieves some buy-in with setting SWAN membership fees and operations?
6. What other types of entities or organization structures would the board like to consider? Examples would be a for-profit corporation, or how to create a new Illinois library system (LIBRARIES (75 ILCS 10/) [Illinois Library System Act](#)).
7. Does the idea of a Governance Study Committee have a place within the decision to change SWAN’s legal entity? (See written charge)



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RE: Application of FOIA and OMA to Intergovernmental Entities

Dear Clients:

You have asked us to research whether or not intergovernmental entities (such as CCS, LIMRiCC, MAGIC, PrairieCat and SWAN) are considered "public bodies" pursuant to the Open Meetings Act ("OMA") and Freedom of Information Act ("FOIA") and must comply with those statutes. In this letter, these intergovernmental entities (CCS, LIMRiCC, MAGIC, PrairieCat and SWAN) are referred to as "the Entity" or "the Entities." Currently, all of the above entities operate in accordance with OMA and FOIA.

Introduction and Statutory Definitions:

The Entities are intergovernmental entities whose members are public libraries and library districts ("Library" or "Libraries"). The Entities have been established pursuant to the intergovernmental cooperation clause in Article VII, Section 10 of the Illinois Constitution and the statutory provisions set forth in the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* The Intergovernmental Cooperation Act does not address whether OMA or FOIA applies to intergovernmental entities created pursuant to the Intergovernmental Cooperation Act.

OMA defines public body as:

"Public body" includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or

commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. "Public body" includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. "Public body" includes the Health Facilities and Services Review Board. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, an ethics commission acting under the State Officials and Employees Ethics Act or the Illinois Independent Tax Tribunal. 5 ILCS 120/1.02.

FOIA is also applicable to "public bodies," and FOIA defines "public body" as follows:

"Public body" means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act. 5 ILCS 140/2(a).

The distinction between the definition of "public body" in OMA and the definition of "public body" in FOIA is that the definition in FOIA does not include the phrase "supported in whole or in part by tax revenue, or which expend tax revenue." While this distinction is notable, the tax revenue language in OMA is limited to "*committees and subcommittees* supported in whole or in part by tax revenue, or which expend tax revenue." The Entities are not committees or subcommittees of the Libraries, and, as such the distinction is not critical to the "public body" analysis. Moreover, at least one court has determined that the similar purposes behind OMA and FOIA, along with the similar definitions of "public body," support a conclusion that there is no reason to distinguish between the two statutes. *Board of Regents of the Regency University System v. Reynard*, 292 Ill. App. 3d 968, 976 (4th Dist. 1997).

None of the Entities are a legislative, executive, administrative or advisory body of the State, counties, townships, cities, villages, school districts, or incorporated towns. In addition, none of them are a committee, commission, board, or bureau of a municipality or this State, nor are they advisory bodies. None of the intergovernmental entities listed above are a committee or subcommittee. Finally, in our opinion, an intergovernmental entity is not a "municipal corporation." See *Troutman v. Keys*, 156 Ill.App.3d 247, 254-55 (1st Dist. 1987); *Chicago Transit Authority v. Danaher*, 40 Ill.App.3d 913 (1st Dist. 1976); *Village of Peoria Heights v. Illinois Fraternal Order of Police Labor Council*, 12 PERI ¶ 2018.

In light of the fact that the Entities are not municipal corporations, the only remaining argument that OMA and FOIA apply is that an intergovernmental entity is a subsidiary body of the individual Libraries. Further, while the Entities may not fit neatly in the traditional definition of subsidiary body, the Entities are the creation of local governments, funded by local governments and are run by members of local governments. As such, the definition of subsidiary body under FOIA and OMA may be applicable. See *Hopf v. Topcorp, Inc.*, 170 Ill. App. 3d 85, 91 (1st Dist.

1988) (The Court states the essential question is whether the entity is, in essence, a public entity performing a public function). There are currently no PAC opinions or case law addressing whether an intergovernmental entity created pursuant to the Illinois Constitution and Intergovernmental Cooperation Act must comply with OMA or FOIA. Therefore, the best approach is to rely on the case law that evaluates whether an entity is an “advisory body” or a “subsidiary body” and apply that analysis to the Entities.

Analysis of Cases:

Applying the subsidiary and advisory body case law to control our analysis, there are several factors that courts consider when determining whether an entity is an advisory or subsidiary body, such as:

- (1) who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure;
- (2) the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute;
- (3) whether its role is solely advisory or whether it also has a deliberative or investigative function;
- (4) whether the entity is subject to government control or otherwise accountable to any public body;
- (5) whether the group has a budget;
- (6) its place within the larger organization or institution of which it is a part; and
- (7) the impact of decisions or recommendations that the group makes.

University Professionals of Illinois, Local 4100 of the Illinois Federation of Teachers vs. Stukel, 344 Ill. App. 3d 856, 865 (1st Dist. 2003) (citations omitted).

Similarly, in *Hopf v. Topcorp, Inc.*, 170 Ill. App. 3d 85, 91-92 (1st Dist. 1988), the court stated that the significant factors are as follows: (1) the legal nature of entity; (2) whether the entity is subject to direct government control and the degree of such control or supervision; (3) the amount of public funding of the entity; and (4) the nature of the responsibilities of the entity.

Legal Nature of Entity

Here, each Entity is created through an intergovernmental agreement (“IGA”) adopted by the respective Libraries and those IGAs and associated By-laws create the governing boards of the Entities (referred to as “Governing Boards”). By the very nature of the Intergovernmental Cooperation Act and the Illinois Constitution, the Entities are created by a governmental resolution or agreement. This is different than the not-for-profit corporation in *Rockford Newspapers* and the private corporations in *Hopf v. Topcorp, Inc.* See *Hopf, supra*, and *Rockford Newspapers, Inc. v. Northern Illinois Council on Alcoholism and Drug Dependence*, 64 Ill.App.3d 94, 96 (2d Dist. 1978).

Governmental Control

With respect to the amount of control the member Libraries have over the Entities, each Entity is different. Although the Entities are created by IGAs, each IGA establishes the basic operating and procedural requirements for the Entity and the By-Laws establish membership on their respective Governing Boards. The member Libraries jointly control the Entities through the IGAs and, as such, the Entities are subject to direct governmental control. The members of the

Governing Boards are not appointed by the member Libraries nor are the Governing Boards comprised of elected officials, rather they are selected as prescribed by the Entity's By-Laws. See *Rockford Newspapers*, 64 Ill. App. 3d at 96 (Fact that board of directors were selected pursuant to NICADD's own by-laws and not elected or appointed by any governmental official was a significant factor in not being a subsidiary).

Although the member Libraries select their own representatives, the member Libraries have a significant role in the running of the Entities. For many of the Entities, the member Libraries have a role in the day-to-day operations of the Entity. The Libraries also have a role in approving funding for the Entities and participate in the operations of the Entity to a greater extent than an advisory committee.

Public Funding

The budget for the Entities is funded primarily by the member Libraries. While funding by a government is a factor, a large percentage of public funding alone will not create a "subsidiary body." *Hopf*, 170 Ill. App. 3d at 91. In addition, each Entity approves an annual budget and prepares financial statements and undergoes an audit on an annual basis. In addition, many of the employees of the Entities are members of public pension programs such as IMRF or ICMA-RC.

Nature of the Responsibilities

The nature of intergovernmental entities is that they share or combine services and/or powers of the individual units of local government. However, an argument can be made that these functions are similar to a business contracted by the Libraries to provide services. In *Rockford*, the Court recognized that governmental bodies normally contract with private companies to perform services for the public welfare, which includes delegating some statutory duties to those companies. *Rockford Newspapers*, 64 Ill. App. 3d at 97.

In general, all of the Entities except for LIMRiCC provide and maintain library automation and library computer services, which are considered public services of the Libraries. LIMRiCC is an insurance risk pool that provides insurance to its members, which is a service the members need in order to operate as public libraries. Overall, this factor, applied to all entities except for LIMRiCC, appears to fall on the side of compliance with OMA and FOIA.

Legislative Interpretation

Finally, from a legislative interpretation standpoint, neither OMA nor FOIA include the term "intergovernmental agency" or "intergovernmental entity" in their definitions of public body. The creation of intergovernmental agencies and entities was established by the Intergovernmental Cooperation Act in the 1970's and FOIA and OMA have been significantly amended since that time, most notably in 2010. An argument can be made that if the legislature had intended to subject intergovernmental entities to the requirements of OMA and FOIA, it would have included those entities in the definition.

Conclusion:

In summary, there are arguments for and against finding intergovernmental entities to be public bodies under OMA and FOIA. Different courts may weigh the factors outlined above differently by placing emphasis on one factor over another. If a court considers the essential

question to be whether the intergovernmental entities are public entities performing public functions, the Entities are likely to be found subject to OMA and FOIA. Also, courts have interpreted OMA and FOIA broadly in accordance with their policies of providing information about government to the public. Further, recent decisions from the Public Access Counselor's Office ("PAC") establish that the PAC has taken a broad view of OMA and FOIA and would consider the factors of public funding, establishment by intergovernmental agreement and the responsibilities of the Entities to weigh in favor of requiring compliance with OMA and FOIA.

To date, we have advised clients that the more conservative approach is to comply with OMA and FOIA. We are aware that some intergovernmental agencies do not comply with OMA and FOIA. It is possible that one of those agencies will be subject to a request for review or to litigation challenging its failure to comply with OMA or FOIA. Until there is clear guidance from the PAC or a court decision that addresses the issue, we continue to believe that compliance with OMA and FOIA is the safer approach. This would continue the Entities' current practice and thus would not impose additional burdens. While FOIA and OMA are burdensome, non-compliance with OMA and FOIA could result in a request for review filed with the PAC or with the Circuit Court which may lead to penalties and will involve legal costs. In addition, given that the current practice of the Entities is to comply with OMA and FOIA, member Libraries are familiar with that openness and may not be in favor of changing the way the Entities are operated. Last, if there is a challenge for failure to comply with OMA or FOIA, there is likely to be negative publicity for the Entity or Entities involved. However, because there is no direct guidance from the PAC or cases, an Entity may decide not to comply with OMA or FOIA and we believe we have good faith arguments to support that position.

Please contact us if you have any questions or would like to discuss these issues further.

Sincerely,

KLEIN, THORPE AND JENKINS, LTD.

A handwritten signature in black ink, appearing to read "Kathie T. Henn", with a stylized flourish at the end.

Kathie T. Henn

KTH/an

cc: G. Dempsey



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September 4, 2018

VIA EMAIL ONLY

Aaron Skog, Executive Director
SWAN Library Services
800 Quail Ridge Drive
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aaron@swanlibraries.net

Re: SWAN, the Illinois Open Meetings Act and Membership Voting

Mr. Skog:

Questions have been raised regarding the application of the Illinois Open Meetings Act ("OMA") with regard to votes by SWAN's member libraries. The questions raised by SWAN, and my answers, are below. If there are additional questions or information I can provide, please advise.

Question: SWAN follows the OMA for its meetings, and the SWAN bylaws define the voting and quorum. If we wished to have some electronic attendance for voting on our annual budget, what would the OMA allow?

Answer: SWAN's Bylaws, in Section III.8.C., provide that SWAN's proposed budget must be approved by a two-thirds (2/3) vote of all the member libraries present at the March member library quarterly meeting. The OMA sets forth minimum legal requirements for meetings of public bodies. SWAN's Bylaws, in Section VIII.4., provide that meetings of its member libraries "shall be noticed, held and otherwise conducted in conformance with the Illinois Open Meetings Act and general Parliamentary Procedure." Under the OMA, a quorum of the members of a public body must be physically present at the meeting location. 5 ILCS 120/2.01.¹ A quorum is a majority of the members of the public body, for example, a quorum of a 100 member public body is 51 members.

Under Section 7 of the OMA, a public body may adopt rules allowing for attendance by video or audio conference if a quorum of its members is physically present at the meeting location. 5 ILCS 120/7. If SWAN member libraries desired to allow for attendance and voting by video or audio conference for voting by member libraries on the annual budget, the member libraries could adopt written rules allowing for such. The written rules must include the following terms, per the OMA:

1. The representative of the member library wishing to participate by video or audio conference must be unable to physically attend the meeting because of (i)

¹ There is an exception to the physical presence requirement for Illinois library systems with jurisdiction over a specific geographic area of more than four thousand five hundred (4,500) square miles. 5 ILCS 120/2.01. If SWAN has a geographic area of more than four thousand five hundred (4,500) square miles, the physical presence requirement does not apply. If SWAN does not have a geographic area that large, but wants consideration for an exception for the physical presence requirement, SWAN could consider approaching State legislators with a proposed amendment to the OMA that would include SWAN.

personal illness or disability, (ii) employment purposes or the business of the public body, or (iii) a family or other emergency, per 5 ILCS 120/7(a).

2. If a member library representative wishes to attend a meeting by other means, the member library must notify the recording secretary or clerk before the meeting unless advance notice is impractical, per 5 ILCS 120/7(b).
3. At the meeting at which member libraries will vote on the annual budget by video or audio conference, a majority vote of all the member libraries must first be passed to allow for participation by some member libraries by video or audio conference, per 5 ILCS 120/7(c).
4. The written rules for participation by member libraries by video or audio conference may be more strict than the OMA, such as limiting participation by member libraries by video or audio conference to annual budget votes, per 5 ILCS 120/7(c).

Question: Are there recommended revisions of the current SWAN Bylaws to accommodate electronic attendance and voting for membership meetings?

Answer: If there is a desire to allow member libraries to vote on SWAN's annual budget by video or audio conference, as outlined above, the member libraries must adopt written rules permitting it. 5 ILCS 120/7(c). The simplest way for the written rules to be adopted would be to have the member libraries adopt "standalone" written rules by voting on the rules at a member libraries' meeting. The policy must be approved by a majority of the member libraries.

An alternative method to adopt the written rules would be to amend SWAN's Bylaws to include the written rules therein. However, an amendment to SWAN's Bylaws, in Sections III.8.A., IX.6. and XII., requires a two-thirds vote of the member libraries present at any regular or special meeting of member libraries, provided that notice of the proposed amendment must be given in writing to all of SWAN's member libraries thirty (30) days prior to such meeting. Adopting standalone written rules is recommended, as it is a more flexible and commonly used approach. Upon request, I am available to assist SWAN in developing written rules in this regard.

Question: There are a number of technical issues I will research, but having not completed that, are some of the ideas of electronic signatures on online ballots, verifying the individual's identity electronically, worth exploring? Does OMA restrict these?

Answer: The OMA requires that votes of members of a public body be taken during a meeting open to the public. 5 ILCS 120/1.02; 5 ILCS 120/2.06(a)(3) and 5 ILCS 120/2a. Electronic balloting conducted outside of an open meeting may not be used to in lieu of votes cast by members of a public body at an open meeting. Instead, electronic ballots may be used, in certain circumstances, as a "straw poll" to gauge interest in an item.

KTJ provided the following advice to SWAN regarding similar issues in August of 2011, as follows:

Votes at open meetings should not be done by ballot and also should not be anonymous. Votes should be taken by voice vote or roll call vote. A roll call vote is never improper, although it may be time-consuming. My recommendation

is that you use a roll call vote for any supermajority vote (including the budget) and any other significant votes and a voice vote for the remaining votes. The minutes should reflect how each member voted. You may want to consider a show of hands (equivalent to a voice vote) so that it is clear to all present who is voting in favor and who is voting against. If it is too difficult for whoever is taking the minutes to keep track of each specific vote due to the size of the group, you may want to consider asking members to submit a "scorecard" that records the votes for the meeting at the conclusion of the meeting. That information can be presented to the person taking the minutes and incorporated into the minutes.

This advice remains applicable to the taking and the tallying of votes of SWAN's member libraries at their meetings.

I am available to further discuss this matter with you or the SWAN Board at your convenience. I can be reached at (312) 984-6436 or at gtsmith@ktjlaw.com.

Sincerely,

KLEIN, THORPE & JENKINS, LTD.

A handwritten signature in black ink, appearing to read "Gregory T. Smith", with a long horizontal flourish extending to the right.

Gregory T. Smith



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April 8, 2019

VIA E-MAIL

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Re: Converting SWAN Into A Nonprofit Entity

Dear Mr. Skog:

You asked us to prepare a summary of the advantages and disadvantages of the System Wide Automated Network ("SWAN") converting from an intergovernmental agency into an Illinois nonprofit corporation exempt from income tax under Section 501(c)(3) of the Internal Revenue Code.¹ A summary of these matters is set forth below.

SWAN AS A PUBLIC BODY

Operating as an intergovernmental agency, SWAN is subject to the Illinois Freedom of Information Act ("FOIA"), the Illinois Open Meetings Act ("OMA," which together with the FOIA are the "Acts") and other laws applicable to intergovernmental agencies. Abiding by these two Acts, and other applicable laws, SWAN is required to share certain information with the public and provide the public an opportunity to attend certain of its meetings. Being subjected to these Acts adds burdens to SWAN operations, including costs, organizational issues, and allocations of resources that would be avoided if SWAN was not subject to them.

Converting SWAN into a nonprofit would potentially alleviate the need to comply with these Acts. However, SWAN will still be required to comply with the Acts if it remains a "public body," even if SWAN converts the legal form in which it exists from an intergovernmental agency into an Illinois nonprofit corporation.

In a recent Illinois Appellate Court case, *Chicago Tribune v. College of DuPage*, the Court examined the definition of "public body" and held that a nonprofit corporation, which claimed to be distinct from any branch of government, was a public body and, therefore, subject to the FOIA. 2017 IL App (2d) 160274, 79 N.E.3d 694. The College of DuPage ("College"), a public body, contracted with the College of DuPage Foundation ("Foundation"), a nonprofit corporation, to perform what the Court found to be a governmental function, which was to support the educational mission of the College by raising money to fund the College's academic

¹ This correspondence references a conversion to a Section 501(c)(3) charitable organization per your direction. If SWAN obtained status as a charitable organization, it would be able to accept tax deductible donations from donors. If donations need to be tax-deductible, then SWAN should apply for Section 501(c)(3) status; otherwise, there would be no need to apply for the same. For purposes of this correspondence, we assume that SWAN believes that it will receive and/or solicit tax-deductible donations.

programs, capital programs, and student scholarships. According to the Court, because the Foundation provided a governmental function, it was a public body subject to FOIA, and had to respond to requests for public records, even though the Foundation was a nonprofit corporation.

In the *College of DuPage* case, the Chicago Tribune suggested defining “governmental function” as any conduct that is expressly or impliedly mandated or authorized by constitution, statute, or other law and that is carried out for the benefit of the general public.” *Id.* at 707. The Court declined to use that definition, stating that it was too narrow, and instead chose to use “a fact-specific inquiry, with an eye toward the particular body’s role and responsibilities and keeping in mind the specific act that it has contracted a third party to perform on its behalf.” *Id.*

The fact-specific inquiry in *Chicago Tribune* looked at a variety of factors including: (1) the fact that the College had no private fundraising operation of its own and relied entirely on the efforts of the Foundation; (2) the fact that the Foundation created and stored all documents related to donations to the College and the Foundation; (3) the fact that the Foundation and College worked closely in determining goals and methods for fundraising instead of the College setting the same; (4) that the College provided office space, office furniture, and even College staff to the Foundation; (5) that the College President assumed a prominent role in the Foundation’s activities, and was entitled to recommend an individual to serve as the executive director of the Foundation; and (6) that the Foundation was allowed to adopt the College’s name, logo, and marketing brand. After finding all of these facts, the Court determined that the Foundation was closely intertwined with the College, and that symbiotic relationship made the Foundation nothing more than an extension of the College, and more specifically, it was enough to conclude that the Foundation was providing a governmental function and was therefore a public body subject to FOIA.

In an Iowa decision, *Gannon v. Board of Regents*, an Iowa taxpayer, using the Iowa FOIA, wanted to see records from the Iowa State University Foundation (“ISU Foundation”), a foundation that accepted, held, administered, invested, and dispersed gifts and grants for Iowa State University. 692 N.W. 2d 31 Iowa (2005). The ISU Foundation argued that it was not subject to FOIA because it was independently incorporated and not a subsidiary of Iowa State University, a public body. Like in *Chicago Tribune*, the Court analyzed the facts of the relationship between the ISU Foundation and Iowa State University. The Court recognized that the ISU Foundation was only concerned with managing grant and gift money for Iowa State University, it was located on the Iowa State University campus, and it was staffed with Iowa State University employees. These specific facts prompted the Court in *Gannon* to find that the ISU Foundation was performing a governmental function.

These two cases suggest that simply SWAN incorporating as a private nonprofit corporation will not necessarily relieve it of its responsibilities as a public body under the FOIA and the OMA if the circumstances indicate that SWAN provides governmental functions.

As such, if SWAN converted to a nonprofit corporation, it would be important to closely examine the relationships it already has with its members, which are units of government, and which SWAN might gain with other government agencies moving forward. Further, it would be a priority to establish outlines for partnering with or working for governmental agencies, such as public libraries, in the future. In the event that a nonprofit corporation version of SWAN were to cross the line of being a public body, SWAN would still have to comply with the FOIA and the OMA, even though SWAN was no longer an intergovernmental agency. Regardless of whether SWAN is an intergovernmental agency or a nonprofit entity, the more services that are traditionally provided by government agencies that SWAN provides, the more likely it is that

SWAN would be subject to the FOIA and the OMA. As such, if SWAN wants to avoid compliance with the FOIA and the OMA, SWAN must not be considered to provide governmental service under the factors in the *College of DuPage* case.

Even if the nonprofit corporation version of SWAN avoided public body classification, the nonprofit would not be entirely immune from any scrutiny by the public. Nonprofits, which are exempt from income tax under Internal Revenue Code Section 501(c)(3) are still required to make available for public inspection and copying, the following forms:

- IRS Form 1023 – *Application for Recognition of Exemption*. This form will includes basic information about the nonprofit, compensation arrangements with officers, directors, trustees, and employees of the nonprofit, and a variety of other details about topics ranging from familial relationships between key personnel to joint ventures with other organizations;
- IRS Form 990 – *Return of Organization Exempt from Income Tax*. This form reports the information that would otherwise be reported for income tax purposes if the nonprofit were not exempt from paying income taxes. This form includes details regarding received contributions, grants, revenues, etc., salaries, and expenses.

While these documents do contain some sensitive information, they do not ask for much in the way of context of the information. For example, while these forms would require the nonprofit to disclose how much it received in contributions, the identity and number of contributors would not be disclosed. These documents solicit information regarding the status and financial information of entities in order to ensure compliance with the internal revenue code and related legislation, but the nonprofit would not be required to offer nearly as much or the same types of information that it currently must provide under FOIA, nor would it have to hold open meetings as it currently does under OMA.

GOVERNANCE

If SWAN wants to no longer be an intergovernmental agency, it will be important to make several substantive changes to SWAN's bylaws, so that, in general, the entity does not function as a public body.

First, the new entity will not be bound by the provisions of the intergovernmental agreement which established SWAN. Instead, the new entity will be governed by a new set of bylaws. The founders of the new entity will be able to establish rules for membership eligibility, how many board members will be required, voting rules, and elections. While these rules do not necessarily have to differ from those in the existing bylaws, it will be important to not cite the intergovernmental agreement as the source of the rules, or as the binding document that requires the use of these rules.

Second, new member libraries would no longer be required to sign the intergovernmental agreement, and instead, would sign traditional service agreements that would be drafted to include terms of service decided on by the board members of the new nonprofit.

Generally, the directors and officers of the new nonprofit would need to understand that the nonprofit entity is a service provider that does not exclusively serve any agency of local, state, or federal government. The nonprofit would not be viewed as a supplement to member libraries, but instead provides services in exchange for fees. The provision of services would be

handled as if the relationship between the recipient and the new nonprofit is that of a provider-customer relationship. The services provided would be distinct from services traditionally provided by libraries, otherwise a court could conclude that the new nonprofit is simply an extension of the member libraries, and therefore a public body.

Lastly, the *College of DuPage* opinion considered overlap of employees and directors between the College of DuPage and the Foundation to be indicative of the Foundation being a public body. For that reason, the new nonprofit should not employ individuals who are simultaneously employees of libraries or other units of government, nor should the new board be completely or mostly comprised of library employees or officials.

The aforementioned changes and requirements will assist SWAN in establishing that the new nonprofit is not a public body that might be subject to FOIA or OMA. However, in our research, we were unable to find a conclusive description of what constitutes a public body. The best measure will be to follow the guidance in the *College of DuPage* case. Operating as a business, even a nonprofit business, as opposed to an agent of the government will help insulate the new entity from public body classification, but it must be understood that there is no way to guarantee a court could not still make such a classification.

COST OF CONVERTING TO A SECTION 501(c)(3) ENTITY

In addition to our fees for preparing articles of incorporation, by-laws, registering with the Illinois Attorney General's office and applying for tax-exempt status with the IRS, SWAN would have to pay any associated fees for the filings required to organize the nonprofit as well as any fees to receive exempt status from the IRS. At a minimum, the fees include a \$600 filing fee associated with Form 1023 and a \$50 filing fee for the articles of incorporation (increased to \$75 for expedited service), as well as a \$15 fee for filing two different documents associated with being a charitable organization.

REQUIRED TAX FILINGS

IRS Form 990, and the corresponding IL-AG 990, mentioned above, would function as the nonprofit's informational tax return. This document would not be confidential the way that a regular entity's tax filing would be, but as discussed earlier, would be available to the public. Additionally, preparation of these forms would likely cause SWAN to incur costs in the way of preparer's fees.

GRANTS

Converting into a Section 501(c)(3) would assist SWAN's ability to apply for and receive grants. In general, private foundations may *only* make grants to nonprofit entities, meaning that SWAN would be able to solicit grants from those sources. Additionally, governments at times make grants to nonprofit organizations.

DONATIONS

As a Section 501(c)(3) organization, SWAN would be able to represent to potential donors that their contributions would be tax deductible. This would be an advantage over its current structure as an intergovernmental agency.

EMPLOYEE BENEFITS

Nonprofit corporations are authorized to provide regular packages of benefits to employees, including healthcare sponsorship and retirement account enrollment.

Currently, SWAN offers a 401(a) Defined Contribution Plan through ICMA-RC. 401(a) plans have similar features as the more well-known 401(k) plans in terms of allowing employer contributions to employees' plans, and employers being allowed to select investment options. The Federal Tax Code allows nonprofit organizations to offer 401(a) plans, meaning that, if SWAN converts to a nonprofit, the members' employees would be able to rollover their 401(a) funds into another employer-sponsored 401(a) without incurring income tax liabilities. It seems that ICMA-RC would no longer be used as the third-party manager of the retirement plans, as it appears to only serve public sector employers.

Because of a nonprofit's eligibility to participate in 401(a) plans and the added option of rolling over funds into other conventional retirement accounts, neither the entity, nor its employees, would have to be adversely affected by the conversion of SWAN into a nonprofit corporation.

LIABILITIES

As an intergovernmental agency, SWAN currently enjoys protection as a local public entity under the Illinois Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act"). See 745 ILCS 10/1-206 (including intergovernmental agencies in definition of "local public entity").

As a nonprofit corporation, SWAN would no longer be covered by the Tort Immunity Act unless it was formed for purposes of conducting public business. However, as a nonprofit corporation, SWAN's members would have limited liability protection under the Illinois Not-For-Profit Corporation Act. 805 ILCS 105/107.85. SWAN's volunteer board members would also receive protection and insulation under the Illinois Not-For-Profit Corporation Act. 805 ILCS 105/108.70. Generally, Illinois law protects directors and officers from personal liability but there are significant limitations.

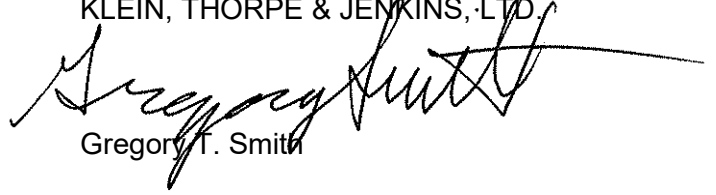
Nonprofit leaders serve as stewards of the organizations' assets and because charitable assets are, by definition, intended for public benefit, they belong to no individual and must be guarded carefully. As a result, nonprofit leaders owe fiduciary duties of care, loyalty, and obedience. In essence, the leaders of the nonprofit must be careful to not act recklessly or in such a way that benefits them personally, or in any way that drastically differs from the nonprofit's mission or corporate purpose.

Under the Illinois Not-For-Profit Corporation Act, agents of the nonprofit can, and in some cases, must, be indemnified by the nonprofit, so long as the agent acted in good faith and in a manner he or she believed to be in the best interest of the nonprofit. 805 ILCS 105/108.75. As a result, in the event of a conversion to a nonprofit, it would be imperative to purchase an appropriate amount of directors' and officers' insurance, which would cover both potential personal liability, and the legal defense expenses required to defend against lawsuits.

If you have any questions, please do not hesitate to contact me.

Sincerely,

KLEIN, THORPE & JENKINS, LTD.

A handwritten signature in black ink, appearing to read "Gregory T. Smith", with a long horizontal flourish extending to the right.

Gregory T. Smith

cc: Donald E. Renner, Klein Thorpe & Jenkin, Ltd.
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May 3, 2019

VIA E-MAIL

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Re: Supplemental Letter regarding Converting SWAN into a Nonprofit Entity

Dear Mr. Skog:

You asked us to prepare a supplemental letter discussing the options for the composition of the Board of Directors of the System Wide Automated Network ("SWAN") if it converts into a nonprofit entity, as well as SWAN's current ability to receive tax deductible donations. Our opinions on these matters are set forth below.

BOARD OF DIRECTORS COMPOSITION

In the *College of DuPage* case that was cited in our prior letter, the Illinois Appellate Court considered the structure of the College of DuPage Foundation's ("Foundation") board of directors, among other things, in its analysis into whether or not the Foundation was a public body. *Chicago Tribune v. College of DuPage*, 2017 IL App (2d) 160274. There, the Foundation was a separate entity created by the College of DuPage ("College") to manage all of the College's fundraising initiatives. The court noted that even though the Foundation's board had many members that were unaffiliated with the College, because the Foundation's board also included high-ranking employees of the College, the board was linked too closely to the College, and therefore it was more appropriate to find that the Foundation was a public body, and therefore subject to the Illinois Freedom of Information Act ("FOIA"). While the Foundation's board composition was not the sole determinative factor in the court's analysis and ultimate decision to view the Foundation as a public body subject to the FOIA, it was an important factor considered by the court.

With that understanding, we will analyze three examples of potential membership of SWAN's Board of Directors, if SWAN were to convert into a nonprofit entity: (1) a Board consisting entirely of public library member representatives; (2) only a portion of the Board consisting of public library member representatives; and (3) no representatives of public library members on the Board.

Only Public Library Member Representatives on the Board of Directors

If SWAN converted into a nonprofit entity, and if its Board was comprised of only public library member representatives, a court would be more likely find that SWAN was a public body subject to the FOIA and the Illinois Open Meetings Act ("OMA") using the same reasoning as the *College of DuPage* case set forth above. While Board membership is not the sole determining factor a court would consider in this analysis, SWAN's Board composition would be an important factor in the court's decision.

In a different context, it is possible that a nonprofit entity, with only representatives from government members on its board of directors, could perform non-governmental functions and therefore not be subject to the FOIA and the OMA. However, given that SWAN wants to continue to provide the same services it does currently, it would be difficult for SWAN to argue that it was not a public body, when its Board is comprised of solely public library member representatives.

A Blend of Representatives and Non-Representatives of Public Library Members on the Board of Directors

As a nonprofit entity, SWAN could have a Board consisting of a blend of representatives from public library members and those with no affiliation with public library members. Depending on how many Board members SWAN would have if it converts into a nonprofit entity, this option may or may not be feasible while still reducing the risk of the nonprofit entity being found to be a public body subject to the FOIA and the OMA. For example, if over half of the Board consists of representatives of the public library members, then the same problems arise as in the scenario above. If SWAN converts to a nonprofit entity, it would be critical for SWAN to have a majority of Board members that have the primary interest of serving the nonprofit entity, and not of its public library members. If the SWAN Board maintains significant loyalty to SWAN's public library members, a court is more likely to find that SWAN remains an extension of the public libraries it serves, and is would therefore continue to be subject to the FOIA and the OMA.

However, if a minority of the Board consists of representatives of SWAN's public library members, then decisions made in directing the nonprofit entity will have been made with a majority of Board members not affiliated with a public library, which would better support SWAN's position that it is not a public body for purposes of compliance with the FOIA and the OMA. The smaller the ratio of Board representatives of public libraries to non-representatives, the less likely it is that a court would see the Board as too closely linked to a public body.

No Public Library Representatives on the Entity's Board of Directors

SWAN could have a Board with no public library representatives. This is Board composition is the least likely to cause concern if SWAN converts to a nonprofit entity in terms of avoiding public body classification for purposes of complying with the FOIA and the OMA. A SWAN Board with no public library representatives is the optimal composition of the Board, if SWAN desires to stay as far away as possible from being classified as a public body under FOIA and OMA.

DONATIONS

The second question you asked us to analyze are the implications of converting to a Section 501(c)(3) organization in terms of receiving donations. Currently, as an intergovernmental entity, we believe that SWAN cannot accept donations that are tax deductible to the donors. However, if SWAN were converted into a nonprofit entity, we believe SWAN would be able to accept tax deductible donations.

The Internal Revenue Code ("IRC") defines charitable contributions as a "contribution or gift to [a] State, a possession of the United States, or **any political subdivision** of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes," IRC Section 170(c)(1) (emphasis added).

As the United States Court of Appeals in the 5th Circuit explained, “[t]he term ‘political subdivision’ is not defined in § 170 or in the Treasury Regulations accompanying § 170. Treasury Regulation 1.103-1(b), however, provides that any division of the government that is a municipal corporation or has been delegated the right to exercise part of the sovereign power of the government, is a political subdivision.” *Texas Learning Tech. Group v. C.I.R.*, 958 F.2d 122, 124 (5th Cir. 1992).

In *Texas Learning Tech. Group*, a group of eleven (11) public school districts formed an entity via an “interlocal agreement” pursuant to the Texas Interlocal Cooperation Act. The Texas Learning Tech Group appealed to the 5th Circuit Court of Appeals after it was found not to be a political subdivision, as contemplated in IRC Section 170(c)(1), by the United States Tax Court. The court noted that case law requires an entity to be authorized to exercise some sovereign powers in order to be considered a political subdivision. *Id.* Examples of sovereign powers include the power to tax, the power of eminent domain and to exercise police power. *Id.* (citing 1 MERTENS, *LAW OF FEDERAL INCOME TAXATION*, Section 8.09 at 27).

The Attorney General of the United States stated that in order to create a political subdivision, a state must delegate some of its sovereign powers to the entity. See 30 Op.Atty.Gen. 252 (“It is not necessary [the political subdivision] exercise all the functions of the state ..., it is sufficient if it be authorized to exercise a portion of them”). The Intergovernmental Cooperation Act of Illinois, in Section 3, provides, “[a]ny power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment and except where specifically and expressly prohibited by law.” 5 ILCS 220/3.

Although under State law, SWAN may be granted some of the powers of its governmental library members, SWAN does not have the power to tax, does not have the power of eminent domain and has no police powers. Therefore, we do not believe that SWAN is a political subdivision of its member libraries under IRC Section 170(c)(1), and therefore is not eligible to receive tax deductible donations at this time. This is our preliminary opinion on this matter. If SWAN would like a more comprehensive review of this issue, please advise, and we will prepare the same.

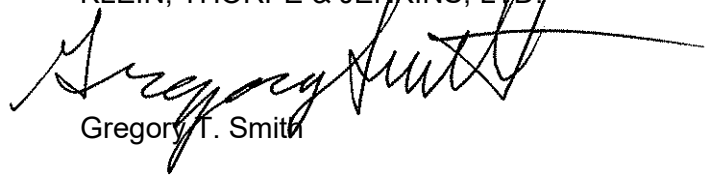
Upon conversion to a Section 501(c)(3) nonprofit corporation, the new SWAN entity would be able to accept tax deductible donations because of the deductibility of charitable contributions. IRC Section 170(c)(2) defines charitable contributions as a contribution or gift to domestic organizations described in IRC Section 501(c)(3). Incorporating SWAN as a Section 501(c)(3) entity would allow the new nonprofit to obtain the tax-exempt determination letter previously mentioned.

Converting SWAN into a Section 501(c)(3) entity would provide SWAN with the benefit of potentially receiving tax-deductible contributions from donors to SWAN, as, in its present form, we do not believe that donations to SWAN are tax deductible given the analysis above.

If you have any questions, please do not hesitate to contact me.

Sincerely,

KLEIN, THORPE & JENKINS, LTD.

A handwritten signature in black ink, appearing to read "Gregory T. Smith", with a long horizontal flourish extending to the right.

Gregory T. Smith

cc: Donald E. Renner, Klein Thorpe & Jenkin, Ltd.
Derek A. Farrugia, Klein Thorpe & Jenkin, Ltd.

SWAN Governance Study Committee

Charge & Guidelines

The name of the committee will be the SWAN Governance Study Committee

It will be composed of 5 voting members representing small, medium, large, north, west, and south libraries. The Committee will be chaired by a member of the SWAN Board. The SWAN Executive Director will be an ex-officio member.

The charge to Governance Study Committee is to review the current governance structure, identify and review other forms of governance, and develop a recommendation for the SWAN Membership.

Members of the Governance Study Committee will be expected to:

- Attend committee meeting either in person or through online conference as often as every month;
- Study other governance models;
- Attend 3 advisory group meetings;
- Attend 1 full membership meeting;
- Meet with SWAN Board upon request.

Members of the study group must be good communicators.

The goal is to make a presentation and a recommendation to the full membership at a special meeting in October. December 2019 is the target for completing the process.

The Committee will request information from other consortia for review and possible follow-up. Other Illinois library consortia and the Consortia of Academic and Research Libraries in Illinois (CARLI) will be surveyed as well.

Three membership meetings will be held to do scenario planning and to present models for membership reaction. A facilitator will be retained to conduct these meetings.