

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
WWW.STATE.MA.US/DOS

JANE SWIFT
GOVERNOR

ANGELO R. BUONOPANE
DIRECTOR

ROBERT J. PREZIOSO
DEPUTY DIRECTOR

June 21, 2002

Christopher L. Lindquist, Library Director
The Sturgis Library
The P.O. Box 606
Barnstable, MA 02630

Re: Whether The Sturgis Library is subject to Massachusetts General Laws ch. 149, sections 26-27H.

Dear Mr. Lindquist:

I am responding to your letter dated June 4, 2002, requesting the Division of Occupational Safety ("DOS") to determine whether the Sturgis Library located in Barnstable, Massachusetts, is subject to M.G.L. ch. 149, sections 26-27H. In your letter you state that the Sturgis Library is a non-profit (26 U.S.C. Section 501 (c) (3)) organization, which is privately owned and run by an independent Board of Trustees. You also state that the Library building and the grounds are private property owned and operated by the Board of Trustees. You have also attached to your letter a document dated August 24, 1971 from the Internal Revenue Service stating that The Sturgis Library is exempt from Federal income tax under 26 U.S.C. Section 501 (c) (3) of the Internal Revenue Code of 1954; a Certificate of Exemption from the Massachusetts Department of Revenue (M.G.L. ch. 64H, sections 6(d) and (e), dated November 24, 1990; and the by-laws of the Sturgis Library.

For the reason set forth below, it is the determination of this office that the requirements of the prevailing wage law do not apply to the Sturgis Library.

The Sturgis Library is not a public agency covered by the prevailing wage statute. The prevailing wage law sets forth requirements for public agencies when they engage in the construction, addition, or alteration of public works. Section 26 reads, in relevant part:

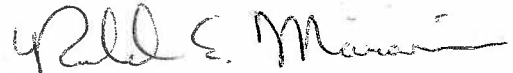
In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works *by the commonwealth, or by a town, authority or district*, or by persons contracting or subcontracting for such works...[Emphasis added.]

The Sturgis Library is a private, not-for-profit corporation. In this case it is neither an agency of the Commonwealth nor a county, town, authority, or district. Furthermore, there is no public work involved, such as real property, or any indication that public funds will be used for this project.

This determination is based on the above-mentioned facts and would require further review if the information provided to me were found to be in error or if the underlying facts were amended.

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ronald E. Maranian", written in a cursive style.

Ronald E. Maranian
Program Manager

cc: Robert J. Prezioso, DOS Deputy Director
Kathryn Palmer, DOS General Counsel
Daniel S. Field, Office of Attorney General



The Sturgis Library

P.O. BOX 606, BARNSTABLE, MASSACHUSETTS 02630 Tel: (508) 362-6636 Fax: (508) 362-5467

RECEIVED

JUN - 7 2002

**DIV. OF OCCUPATIONAL SAFETY
BOSTON OFFICE**

June 4, 2002

Mr. Ronald E. Maranian
Program Manager
Division of Occupational Safety
399 Washington Street
5th Floor
Boston, MA 02108

Dear Mr. Maranian:

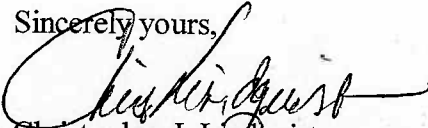
Thank you for speaking with me today regarding Sturgis Library's request for a determination on whether or not the Library needs to comply with prevailing wage requirements. The Library intends to contact with RISE Engineering, a Division of Thielsch Engineering, Inc., of Cranston Rhode Island in order to install energy-efficient bulbs throughout the Library, as part of the Cape Light Compact program. Michael Kolb, Project Coordinator, has requested that I obtain a written determination from you, in order to proceed.

As we discussed, Sturgis Library is a non-profit 501c3 organization, privately owned and run by an independent Board of Trustees. Sturgis Library is located at 3090 Main Street, Route 6A in Barnstable Village, Cape Cod. The Library building and the grounds are private property owned and operated by the Board of Trustees. Please find enclosed some documentation pertaining to our non-profit status, on file with the IRS. In addition, I have enclosed our articles of incorporation.

Please let me know if you need any further information regarding our non-profit status. I can be reached at (508) 362-8448 or via email at sturgislib@attbi.com.

Thank you for your time and consideration of this matter.

Sincerely yours,


Christopher J. Lindquist
Sturgis Library Director

Address any reply to: JFK Federal Bldg., Boston, Mass. 02203

Department of the Treasury

District Director

Internal Revenue Service

Date:

In reply refer to:

August 24, 1971

AU:EO:



▷ Sturgis Library
Barnstable, Mass.

Gentlemen:

This is in reply to your request of August 24, 1971.

The records of this office indicate that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Donors may deduct contribution to you, as provided by section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes under sections 2055, 2106 and 2522 of the Code.

Very truly yours,

*W. Lawrence, Rev. Agent
for*

WILLIAM E. WILLIAMS
District Director

Tax Exemption No. E000-022-887



NOV 24 1990

CERTIFICATE OF EXEMPTION

Certification is hereby made that the organization herein named is an exempt purchaser under General Laws, Chapter 64H, Sections 6(d) and (e). All purchases of tangible personal property by this organization are exempt from taxation under said chapter to the extent that such property is used in the conduct of the business of the purchaser. Any abuse or misuse of this certificate by any tax-exempt organization or any unauthorized use of this certificate by any individual constitutes a serious violation and will lead to revocation. Willful misuse of this Certificate of Exemption is subject to criminal sanctions of up to 1 year in prison and \$10,000 (\$50,000 for corporations) in fines. (See reverse side).

* STURGIS LIBRARY
3090 MAIN STREET
BARNSTABLE MA 02630

EXEMPTION NUMBER E

011-149-466

ISSUE DATE

01-02-90

CERTIFICATE EXPIRES ON

NONE

NOT ASSIGNABLE OR TRANSFERABLE

COMMISSIONER OF REVENUE
STEPHEN W. KIDDER

DEPARTMENT OF REVENUE
DETERMINATION BUREAU

EXEMPT PURCHASER CERTIFICATE

MASSACHUSETTS DEPARTMENT OF REVENUE
CERTIFICATE OF EXEMPTION



Certification is hereby made that the organization herein named is an exempt purchaser under General Laws, Chapter 64H, Sections 8(d) and 19. All purchases of tangible personal property by this organization are exempt from taxation under said chapter to the extent that such property is used in the conduct of the business of the purchaser. Any abuse or misuse of this certificate by any tax-exempt organization or any unauthorized use of this certificate by any individual constitutes a serious violation and will lead to revocation. Willful misuse of this Certificate of Exemption is subject to criminal sanctions of up to 1 year in prison and \$10,000 (\$50,000 for corporations) in fines.

PLEASE
COMPLETE
THIS
SECTION

NAME STURGIS LIBRARY
ADDRESS 3090 Main Street
CITY Barnstable STATE MA ZIP 02630

EXEMPTION NUMBER E 011-149-466

ISSUE DATE 01-02-90

CERTIFICATE EXPIRES ON NONE

NOT ASSIGNABLE OR TRANSFERABLE

COMMISSIONER OF REVENUE

Purchased from _____

Description of Property to be Purchased _____

Signed Under the Pains and Penalties of Perjury

Dated _____ 19 _____

Signature Ray J. Hammer

By (title) President of the Board

Check Applicable Box ☐

Single Purchase Certificate ☐

Blanket Certificate ☐

INSTRUCTIONS FOR USE OF EXEMPT PURCHASER CERTIFICATE

Sales to the United States, the Commonwealth or to any political subdivision thereof or to their respective agencies are exempt.

Sales to any Corporation, Foundation, Organization or Institution which is exempt from taxation under the provisions of §501 (c)(3) of the U. S. Internal Revenue Code, as amended and in effect for the applicable period, are exempt from tax provided that:

- A. The tangible personal property which is subject to such Sales Tax is used in the conduct of such Organization or Agency;
- B. The Organization or Agency shall have obtained: a Certificate of Exemption (Form ST-2) from the Commissioner of Revenue certifying that it is entitled to exemption and shall attach a photocopy of such form (ST-2) hereto;
- C. The Vendor must retain a copy of Form ST-5 accompanied by Form ST-2 as are other tax records. See Record Retention Regulation 830 CMR 62C.24

NOTICE TO VENDORS

Vendors must obtain a copy of the Certificate of Exemption at the time of any sale to an Exempt Organization. Vendors should verify the validity of the Certificate presented to them by checking the Expiration Date on the Certificate. Vendors must not honor a Certificate of Exemption which has expired.

Vendors should call the Determination Bureau (617) 727-0135 if they have any questions regarding a Certificate of Exemption which is presented to them.

PLEASE NOTE

Massachusetts General Laws, Chapter 64H, Section 6(e), as amended by Chapter 233 of the Acts of 1983, states as follows: The certificate of exemption issued by the Commissioner under clause (2) shall be effective for a period of five years from the date of its issuance provided that ninety days prior to said date the Commissioner shall notify such corporation, foundation, organization or institution, of the expiration date of said certificate. Such corporation, foundation, organization or institution must obtain from the Commissioner a renewal of such certificate in order to be entitled to a continuance of such exemption beyond the expiration date of any existing certificate.

If necessary, additional information may be obtained from:

Massachusetts Department of Revenue
Determination Bureau
P. O. Box 7027
Boston, Massachusetts 02204

(This form is approved by the Commissioner of Revenue and may be reproduced.)

BY-LAWS
of
STURGIS LIBRARY

Article I. NAME AND SEAL

The name of the corporation shall be The Sturgis Library. The Seal shall be circular in form and shall bear the words and figures "The Sturgis Library 1863".

Article II. PURPOSES

It shall be the purpose of the corporation to maintain a free public library in the Town of Barnstable for the benefit of the inhabitants of that town in accordance with the terms of the Indenture of Trust of William Sturgis dated October 20, 1863.

The corporation shall be a strictly nonprofit organization, operated exclusively for the foregoing purposes, and no part of its earnings or its assets upon dissolution shall inure to the benefit of any private individual.

Article III. USE OF THE LIBRARY

1. In accordance with the terms of said Sturgis Indenture of Trust and the purposes of this Corporation as stated in Article II above, any permanent or temporary resident or inhabitant of the Town of Barnstable, any person owning real property therein, or any persons permitted by the Laws of Massachusetts, may use the facilities of the Sturgis Library (The Library) and may borrow books therefrom without charge, subject to such reasonable requirements for registration as the Board of Trustees may establish.

2. Use of the Library by others shall be subject to the control of the Board of Trustees who shall grant permission as they shall see fit. The Board may delegate such responsibility to the President and the Library Director in its discretion.

Article IV. TRUSTEES AND MEETINGS

1. There shall be a Board of Trustees consisting of not more than fifteen Trustees, a majority of whom at any given time shall be permanent residents of the Town of Barnstable. The annual meeting of the Board shall be on the 3rd Monday of July each year.

The Board shall be composed of Trustees whose terms shall be for one (1), two (2), or three (3) years. No more than one half of the members terms are to expire in the same year. These terms and conditions take effect May 18, 1992. At least a month before the annual meeting, a nominating committee shall be appointed by the President to consider candidates for election to fill the vacancies on the Board which shall present its recommendations to the annual meeting of the Board. At such meeting the Trustees shall fill such vacancies on the Board. In addition, the Board shall have the power at any time to fill vacancies arising from the resignation, death or incapacity of any Trustee. For the election of Trustees, a majority vote of the Board shall be required.

2. The Board of Trustees shall possess and exercise all the powers of the corporation in accordance with the purposes set forth in Article II of the By-Laws.

3. Regular meetings of the Board of Trustees shall be held at such times as the Trustees may fix. Special meetings of the Board of Trustees may be held at such times and places as may be determined by the President who shall be empowered to call such meetings. At least forty-eight hours notice by mail, telegraph, telephone or word of mouth shall be given for a special meeting unless shorter notice is adequate under the circumstances. However, notice of any meeting may be waived by a Trustee in writing before or after the meeting, and every Trustee present at any meeting shall be conclusively presumed to have received due notice thereof.

4. The Board may in its discretion (at least once a year) call a meeting open to the public at which a report will be submitted on the activities of the Library.

5. A majority of Trustees shall constitute a quorum, but a smaller number may adjourn finally or from time to time without further notice until a quorum is present.

6. When a quorum is present, the vote of a majority of the Trustees present shall, except where a larger vote is required by law or these By-Laws, decide any question brought before such meeting.

7. All Trustees shall serve until their successors have been duly nominated and elected.

8. The Board of Trustees may elect Honorary members. An Honorary Member shall receive notices of all meetings of the Board, be welcome to attend all meetings, and join in the discussion, but shall have no vote.

9. The Chairman of the "Friends of the Sturgis Library" shall receive notices of all regular meetings of the Board, be welcome to attend all regular meetings, but shall have no vote.

Article V. COMMITTEES

The Board of Trustees or the President with their approval shall appoint such committees of Trustees as are deemed necessary or desirable.

Notwithstanding the foregoing, there shall be an Investment Committee which shall be chosen by the Board of Trustees, consisting of not more than four members of the Board, one of whom shall be the Treasurer. The members of the Investment Committee shall serve for a period of five years or until their successors are chosen and qualified by acceptance of the office. The Investment Committee shall have the following duties and authority:

1. Subject to the approval of the Board, the Investment Committee shall have the responsibility for the investment of the Library's portfolio and in connection therewith, the Investment Committee shall have the authority to invest in securities, real estate, or other suitable investments, and shall have the authority to delegate the responsibility for all or any portion of the Library's portfolio to a suitable financial institution.

2. The Investment Committee shall submit, quarterly, a full statement of the current investments of the Library's portfolio to the Trustees. At such time as the Board shall direct, the Investment Committee will submit an independent audit to the Trustees of the Library. The Treasurer is authorized to hold any securities of the Library in a Bank nominee name if he considers it advisable.

Article VI. LIBRARY DIRECTOR

The Board of Trustees shall appoint a Library Director and staff on such terms and for such period as they may deem appropriate. The Library Director shall have general charge of the operation and property of the Library, subject to the direction of the Board.

Article VII. OFFICERS

1. The officers of the Library shall be a President, a Vice President, a Treasurer, an Assistant Treasurer, and a Secretary. The officers shall be elected by the Board of Trustees from the Board of Trustees for a term of one year or until their successors shall have been elected and qualified.

2. Any vacancy among any officers of the Library shall be filled by the Board of Trustees, and any officers elected to fill any vacancy shall hold office for the unexpired term.

3. Each officer shall, subject to these By-Laws, have, in addition to the duties herein set forth, such duties and powers commonly incident to his office, and such duties and powers as the Board of Trustees may from time to time designate.

Article VIII. PRESIDENT

1. The President shall preside at all meetings of the Trustees at which he is present. He shall, subject to the supervision of the Trustees, have charge of the affairs of the corporation and in addition to the powers and duties customarily belonging to the office, such powers and duties designated from time to time by the Trustees. He shall report on the activities of the corporation to the Trustees at least once per year and at such other times as they request.

2. The Vice President shall perform the duties of President in the latter's absence.

Article IX. SECRETARY

1. The Secretary shall keep a true record of all meetings of the Trustees in a book to be kept therefor, which book shall be kept at the principal office of the Library and shall be open at all reasonable times to the inspection of any Trustee. In the absence of the Secretary, at any such meeting a Temporary Secretary shall be chosen, who shall record the proceedings of such meeting in the aforesaid book. In addition, the Secretary shall have custody of the seal of the corporation.

Article X. TREASURER

1. The Treasurer shall be charged with the care and custody of the funds of the Library. He shall deposit the same in the name of the Library in such bank or trust companies as the Board of Trustees shall designate. He shall have the power to endorse for deposit or collection all notes, check, drafts, and other obligations for the payment of money payable to the Library. He shall report at each meeting of the Board on the financial condition of the corporation to the Trustees.

2. The Assistant Treasurer shall perform the duties of Treasurer in the Treasurer's absence.

Article XI. CHECKS, CONTRACTS & OTHER INSTRUMENTS

1. All checks drawn on bank accounts of the Library shall be signed on its behalf by the President or the Treasurer, or such other officer as authorized from time to time by the Trustees.

2. The Board of Trustees may authorize any officer in the name or on behalf of the Library to enter into any contract or execute under the corporate seal and deliver any deed, note, or other instrument or property and such authority may be general or confined to specific instances; unless so authorized no officer shall have the power or authority to bind the Library by any such contract or instrument or to render it financially liable for any purpose or to any amount.

Article XII. AMENDMENTS

These By-Laws may be amended if two-thirds of the full Board of Trustees vote in favor of the amendment or amendments at any annual or special meeting of the Trustees called for the purpose, provided that notice of the substance of the proposed amendment is given in the call for the meeting, and provided further that the amendment or amendments are in accordance with the terms of the Indenture of Trust of William Sturgis dated October 20, 1863.

Article XIII. PERSONAL LIABILITY

No non-salaried officer or trustee shall be personally liable to the Corporation or its members for monetary damages for any breach of fiduciary duty as an officer or trustee notwithstanding any provision of law imposing such liability, except for liability (1) for breach of the trustee's duty of loyalty to the Corporation or its members; (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (3) for any transaction from which the officer or trustee derived improper personal benefit; or (4) for any activity involving unauthorized distributions and/or unrepaid loans.

The corporation shall, to the extent legally permissible, indemnify each person who may serve or who has served at any time as an officer or trustee of the corporation against all expenses and liabilities, including, without limitation, counsel fees, judgments, fines, excise taxes, penalties and settlement payments, reasonably incurred by or imposed upon such person in connection with any threatened, pending or completed action, suit or proceeding in which he or she may become involved by reason of his or her service in such capacity; provided that no indemnification shall be provided for any such person with respect to any matter as to which he or she shall have been finally adjudicated in any proceeding not have acted in good faith in the reasonable belief that such action was in the best interests of the corporation; and further provided that any compromise or settlement payment shall be approved by a majority vote of a quorum of trustees who are not at that time parties to the proceeding.

The indemnification provided hereunder shall inure to the benefit of the heirs, executors and administrators of persons entitled to indemnification

hereunder. The right of indemnification under this Article shall be in addition to and not exclusive of all other rights to which any person may be entitled.

No amendment or repeal of the provisions of this Article which adversely affects the right of an indemnified person under this Article shall apply to such person with respect to those acts or omissions which occurred at any time prior to such amendment or repeal, unless such amendment or repeal was voted by or was made with the written consent of such indemnified person.