

MEMORANDUM

To: Kay Montgomery
Fr: Thomas O. Bean
Re: Appointment of Clerk and Assistant Treasurer of the UUA
Date: May 6, 2013

Kay, per your request, this memorandum addresses whether (A) Harlan Limpert may serve as the “Clerk” of the UUA even though he is not a resident of the Commonwealth of Massachusetts; and (B) the Board may appoint (i) Harlan to the non-salaried position of Clerk after removing you from the position of Recording Secretary, and (ii) Karen Wheeler to the non-salaried position of Assistant Treasurer. In short, the answer to both questions is “yes.” Attached to this memorandum are copies of proposed motions for the appointments that may be made at a June Board meeting.

A. Massachusetts General Laws c. 180, § 6A states, in pertinent part: “The clerk shall be a resident of the Commonwealth unless the corporation shall have a duly appointed resident agent.” In other words, if a charitable corporation such as the UUA has a “resident” agent, i.e., an agent in the state for, among other things, service of legal process, the clerk need not be a resident of the Commonwealth.

A document filed by the UUA with the Massachusetts Secretary of State in February, 2012 in connection with the UUA-UUUNO merger lists Tim Brennan, with an address in Sharon, MA., as the Association’s resident agent. As the UUA has a “resident agent,” the “Clerk” need not be a resident of the Commonwealth. Harlan may thus be the Clerk of the Association under Massachusetts law.

The UUA’s bylaws do not reference the position of “Clerk.” The duties typically performed by a Clerk are those specified in Bylaw section 8.16 as those of the “Recording Secretary.” That section requires the Recording Secretary to be a resident of Massachusetts and, if the person is not a resident, the position becomes vacant. Thus, the way to comply with Massachusetts law and the Bylaws is for the Board to remove you from the position of Recording Secretary and appoint Harlan as “Clerk.” The Board has such authority under section 8.17, which “authorizes the Board to appoint such other officers as it deems necessary and shall fix their powers and duties.”¹ Harlan is qualified for the position because he is a member of a congregation as required by Bylaw section 8.4.

¹ We should probably amend the UUA’s filing at the Secretary of State after July 1, 2013 in two respects: first, to name Harlan, rather than Kay, as the Clerk of the Association; and second, to list Tim’s address at the Association rather than his residential address. We may wish to defer the latter until after the Association relocates.

Attached are proposed motions for the Board to consider with respect to removing you as Recording Secretary and appointing Harlan as Clerk and prescribing his duties in that position. Once the Board removes you as Recording Secretary, that position will be vacant. Hence, the Board may assign to the Clerk the duties described in section 8.16 that were formerly performed by you as Recording Secretary. My understanding is that Harlan will assume the duties performed by the Recording Secretary effective for the post-GA Board Meeting in June, 2013. Accordingly, I have drafted the proposed motion with an effective date that would allow him to serve in that capacity with those duties for that meeting.

B. Bylaw section C-8.2 provides that “all appointed officers shall be appointed by the Board of Trustees . . .” Accordingly, the Board may appoint a Clerk and an Assistant Treasurer.

While the Bylaws do not reference the position of Clerk, they do, as noted, afford the Board the authority to appoint such officers as it deems necessary and to fix their powers and duties. The duties of the Clerk would presumably be those formerly performed by the Recording Secretary as described in the Bylaws.

The Bylaws reference the position of Assistant Treasurer and describes the duties of that position in Bylaw section 10.4. Because Karen Wheeler is qualified for the position as a member of a congregation, the Board has the authority under section 8.17 to appoint her as an Assistant Treasurer with the duties prescribed in the Bylaws. (The position of Assistant Treasurer is not referenced in Bylaw sections 8.8-8.16. Hence, the Board should act under section 8.17).

If you or the Board have any questions concerning the foregoing, please do not hesitate to contact me.

PROPOSED BOARD VOTES WITH RESPECT TO APPOINTMENT OF CERTAIN OFFICERS

MOVED: To elect Karen Wheeler to the non-salaried position of Assistant Treasurer of the Association effective July 1, 2013, to serve until her successor shall be duly chosen and qualified, with the duties set forth in the Association's Bylaws.

MOVED: To thank Kathleen Montgomery for her many years of service as Recording Secretary of the Association, and to remove her from that position, at her request, effective at the end of the day on June 23, 2013.

MOVED: To elect Harlan Limpert to the non-salaried position of Clerk of the Association effective June 24, 2013, to serve until his successor shall be duly chosen and qualified, with the following duties: the Clerk shall keep an accurate record of all meetings of the Association and the Board of Trustees, shall perform such other duties as may be assigned by the Board, and shall perform the duties of a Clerk under Massachusetts law.