You have asked the following questions with respect to application of the Michigan Open Meetings Act, Public Act No. 267 of 1976, as amended ("OMA"), to The Library Network ("TLN") and related boards and committees:

1. Does the OMA apply to (a) the TLN’s Steering Committee (the “TLN Steering Committee”); (b) the Shared Automation System Users Group (“SASUG”); or (c) the Shared Automation System Users’ Group Executive Committee (the “SASUG Executive Committee”)?
   Short answers: (a) likely no; (b) likely no; (c) possibly yes.

2. Are the amendments to OMA currently allowing virtual meetings temporary?
   Short answer: yes.

3. Does OMA allow public bodies to adopt policies on how to run meetings, such as how to take member attendance or roll call votes?
   Short answer: yes.

ANALYSIS

1. **Applicability of OMA to Committees**

   OMA requires that decisions and deliberations of a quorum of the members of a public body generally must be made at a public meeting. OMA defines “public body” to include “a board, commission, committee, subcommittee, authority, or council that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function . . . .” MCL 15.262(a).

   Whether a body falls within the above definition of “public body” depends upon the nature of that body.\(^1\) In *Booth Newspapers, Inc. v. Wyoming City Council*,\(^2\) the court ruled

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\(^1\) OAG No. 6487 (January 14, 1988).
that advisory committees of less than a quorum of the full body\(^3\) that do not collectively deliberate toward resolution of public business are not within the purview of the OMA. Opinions of the Michigan Attorney General have also distinguished between bodies that are advisory in nature, capable of making recommendations concerning the exercise of governmental authority, and bodies that exercise decision-making and policy-making authority. For example, OAG No. 5183\(^4\) concluded that:

\[\text{[T]he act does not apply to committees and subcommittees of public bodies which are merely advisory or only capable of making "recommendations concerning the exercise of governmental authority." These bodies are not legally capable of rendering a "final decision."}^{5}\]

The court in \textit{Edwards v. Oakland Township}\(^6\) cited \textit{Booth} in concluding that the public body must delegate its governmental or proprietary authority to the sub-group in order to be considered a public body. Thus, committees of a public body that are advisory and that leave final decision-making to the public body generally do not fall under the restrictions of the OMA. See also \textit{Hackert v. Charter Township of Pere Marquette}, 2004 WL 435450 (Mich. App. 2004)("because the city council retained ultimate authority to reject the committee's recommendations, the recommendations could not be considered “decisions.”").

On the other hand, advisory bodies may be subject to OMA where, in addition to their purely advisory duties, they are vested with authority to make final decisions on a particular matter.\(^7\)

\textbf{a. TLN Steering Committee}

The TLN Plan of Service and Governance 2015 (the “Plan of Service”) provides that the TLN Steering Committee consists of seven members who are directors of TLN member libraries, with one member serving as an \textit{ex-officio} non-voting member of the TLN Cooperative Board (the “Cooperative Board”). The Plan of Service further provides that the TLN Steering

\footnotesize{\(^3\) See also OAG No. 6057 (April 20, 1982) (the presence of a quorum at such meetings effectively constitutes the committee or subcommittee of a public body with the power to decide public policy).

\(^4\) (March 8, 1977).

\(^5\) See also \textit{House Speaker v. Governor}, 443 Mich. 560 (1993) (governor established executive advisory board was exempt from OMA); OAG No. 6935 (April 2, 1997) (Public school board committee charged with gathering information, reviewing existing school district policy and making recommendations to the board, was not given authority to alter existing district policy or to create new policy. The board evaluated the committee’s recommendations and decisions regarding school district policy were made by the board in open meetings.); OAG No. 6053 (April 13, 1982); and OAG No. 5505 (July 3, 1979) (promotion and tenure committee and budget committee of Wayne State University are advisory and are not subject to OMA).


\(^7\) OAG No. 6652 (July 25, 1990). See also OAG No. 5256 (January 23, 1978) (watershed councils are “public bodies” because, in addition to their advisory duties, they are legally capable of rendering a final decision as the expenditure of public money in carrying out their other functions); OAG No. 6487 (January 14, 1988) (Senate Fiscal Agency is a “public body” because it is vested with final decision-making authority with regard to personnel matters within the Agency and because it determines the policies and procedures for the operation of the Agency).}
Committee “shall advise and make recommendations to the TLN Director and the Cooperative Board on issues pertaining to TLN and shall annually review the proposed budget and services offered or facilitated by TLN.” Under applicable law and opinions cited above, since the powers of the TLN Steering Committee are merely advisory and leave final decision-making to the TLN Director and the Cooperative Board, it is unlikely that the TLN Steering Committee would be subject to OMA.

b. SASUG

The Plan of Service provides that TLN shall acquire, own, manage and operate a Shared Automation System (“SAS”) for the exclusive use and benefit of the libraries that participate in SAS. The Plan of Service provides that participating libraries in SAS shall be members of SASUG, which is established by the Plan. Article VII, E.2., of the Plan of Service grants the following powers to SASUG:

a. To make recommendations concerning fiscal and budgetary matters involving SAS. SASUG will work cooperatively with TLN to develop an annual operations budget of SAS; the budget shall be submitted for recommendation at an annual meeting of SASUG.

b. To consider and recommend policies for the use and operations of SAS; such policies shall be consistent with TLN policies.

c. To make recommendations regarding technology issues and matters involved in or pertaining to SAS.

d. To make recommendations regarding service contracts involving or pertaining to SAS.

e. To make recommendations regarding pending applications of proposed new participants in SAS.

f. To adopt bylaws and rules, not inconsistent with this Plan of Service and the TLN bylaws and policies, for the governance of SASUG.

All of the powers listed in the Plan of Service vested in SASUG appear to be advisory in nature.

The SASUG Bylaws provide that the purpose of SASUG is as follows:

SASUG is meant to be the primary communication channel between the shared automation system (SAS) staff of The Library Network and participating Libraries. Its purpose is to optimize operation of the SAS by providing a forum for problem solving and information exchange. SASUG will deal with
automation issues relating to effective interactions among both shared and stand-alone system libraries and will collaborate with The Library Network automation staff in the development of system wide SAS operational policies and procedures.

The SASUG Bylaws confirm the advisory nature of SASUG as a “communication channel” and “a forum for problem solving and information exchange.”

Under both the Plan of Service and SASUG Bylaws, TLN does not appear to have delegated its decision-making powers with respect to the operations of SASUG. Nor is TLN bound to accept the advice or recommendations of SASUG. In accordance with the legal authority discussed above, SASUG would likely not be subject to OMA.

c. SASUG Executive Committee

The SASUG Bylaws provide for SASUG to elect the Executive Committee, “which will be responsible for decisions regarding future technology planning, fiscal/budget matters, and policies as defined in the Executive Committee Bylaws.” The Executive Committee Bylaws provide that the powers of the SASUG Executive Committee include the following:

Section 2. The Executive Committee shall have the authority to make recommendations concerning fiscal/budget matters involving the shared system on behalf of the SAS Users' Group. This Committee will work with TLN to develop the annual automation operations budget which is presented at an annual meeting of shared automation system users for adoption.

Section 3. The Executive Committee shall have the authority to set policies for the shared automation system that are consistent with cooperative policies.

Section 4. The Executive Committee shall have the authority to make recommendations on behalf of the SAS Users' Group regarding technology issues related to the shared automation system including but not limited to purchase, upgrade and future directions on computer software and hardware.

Section 5. The Executive Committee shall have the authority to make recommendations on behalf of the SAS Users' Group regarding automation service contracts.

Section 6. The Executive Committee shall have the authority to make recommendations on behalf of the SAS Users' Group regarding applications for new participants in the shared automation system.

All of these powers are advisory in nature, with the possible exception of Section 3. The power to set policies may go beyond mere advice and recommendation. The SASUG Executive Committee appears to be vested with authority to make final decisions on policies. The constraint that the policies must be “consistent with cooperative policies,” though, could argue
against this section bestowing delegated power since the SASUG Executive Committee would not have the power to set policies other than those as set by TLN. Given the ambiguity, and lack of clear authority on this issue, the safe approach would be to treat the SASUG Executive Committee as being subject to OMA.

2. **Virtual Meetings**

Under recent amendments to OMA, meetings of public bodies may be held virtually through March 31, 2021. This is set forth in new Section 3a, which provides in relevant part:

Sec. 3a. (1) A meeting of a public body held, in whole or in part, electronically by telephonic or video conferencing in compliance with this section and, except as otherwise required in this section, all of the provisions of this act applicable to a nonelectronic meeting, is permitted by this act in the following circumstances: (a) Before March 31, 2021 and retroactive to March 18, 2020, any circumstances, including, but not limited to, any of the circumstances requiring accommodation of absent members described in section 3(2). MCL 15.263a.

After March 31, 2021, members of public bodies may attend meetings remotely for certain reasons, including military duty, a medical condition, or a statewide or local state of emergency or state of disaster declared pursuant to law or charter or local ordinance. MCL 15.263(2).

3. **Meeting Procedural Rules under OMA**

OMA includes some specific provisions regarding meeting procedure such as a 2/3 roll call vote to call for a closed meeting and a requirement for minutes to include roll call votes. There are also several new provisions in OMA prescribing how virtual meetings should be conducted, including requirements for:

- adoption of procedures for two-way communication;
- those attending remotely to announce their physical location; and
- procedures by which the public is provided notice of the absence of a member and information about how to contact that member in advance of a meeting.

Otherwise, OMA is largely silent as to how public bodies should conduct their meetings with respect to things like taking board member attendance and taking roll call votes. Typically, public bodies will adopt their own rules to govern meeting procedures or rules of parliamentary practice as contained in Robert’s Rules of Order or an alternative source of procedural rules where OMA is silent.

Please let us know if we can be of any further assistance, including preparing appropriate procedural rules or amendments to bylaw provisions.