

November 29, 2018

**VIA EMAIL**

Board of Directors  
Macomb Food Cooperative  
Attn: Margaret Ovitt, Chair  
211 South McArthur  
Macomb, IL 61455

Dear Directors:

As requested by the Board, I have reviewed the letter sent by Sarah Kaplan Law Office to Pam and Gordon Rands dated November 13, 2018, regarding the co-op's recent director election and filling director vacancies.

As you know, there were 5 vacant director positions at the time of the October 27, 2018 annual member meeting and a 6<sup>th</sup> vacancy was created at the meeting when another director resigned. Prior to the annual meeting the board decided to hold the annual director election for 3 positions (for which the 3-year term expired), and to have the board, *after* the annual meeting vote, appoint replacement directors to fill the unexpired terms of the 2 directors who had resigned. This decision is included in the minutes of the board's August 21, 2018 meeting. There were 8 candidates and 3 positions up for election at the annual meeting. At the first board meeting after the annual meeting, the new board appointed one additional director to fill the vacancy created when Sydney Null resigned at the October 27 Annual Meeting.

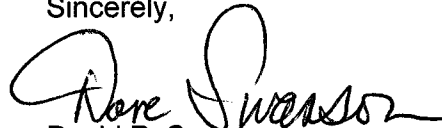
Sarah's letter concludes that the board did not properly conduct this election and did not have authority to fill any of the vacancies after the October annual meeting. The letter concludes that (1) the board was instead required to fill the vacancies prior to the October annual meeting, and (2) the board was required to fill the 3 vacancies with the candidates receiving the 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> highest number of votes in the election.

The conclusions in Sarah's letter are incorrect and not consistent with the co-op's bylaws. The letter suggests that bylaw Section 3.7 governs because it states that when one or more alternatives are presented in a member vote, the alternatives receiving the most votes are deemed to be approved. But Section 3.7 does not apply to filling board vacancies. Instead, filling vacancies is governed by bylaw Section 4.9 which says vacancies "may be filled by the Board for the remainder of the unexpired term". Section 4.9 does not require the Board to fill the vacancy prior to the next annual meeting. It is common for cooperative bylaws to specify that vacancies must be filled by the board prior to the next member meeting, and the director position must be put up for election at the next annual meeting. But the co-op's bylaws do not say that.

Board of Directors  
Macomb Food Cooperative  
November 29, 2018  
Page 2

Bylaw Section 4.1 also covers the board's authority to determine how to handle vacancies. This section says that "the business and affairs of the Cooperative shall be managed under the direction and supervision of the Board . . .", except as to matters reserved to owners by law or in the bylaws. Section 4.1 supports the conclusion that the board's decision to handle the vacancies in the manner it chose in the August 21 board meeting is appropriate and within the board's authority.

Sincerely,



David P. Swanson

DPS/tes