

City of Scottsbluff, Nebraska

Monday, December 18, 2017

Regular Meeting

Item Reports4

Council to discuss and consider action pertaining to the relationship between the League of Nebraska Municipalities (LONM) and the League Association of Risk Managers (LARM).

Staff Contact: Nathan Johnson, City Manager

MEMO

TO: LARM Board Members

FROM: (We will list cities, noting the name of the Mayor, City Administrator, etc.)

DATE: Dec. 14, 2017

Our municipalities are LARM members and collectively represent approximately % of LARM's annual contributions (premium).

The actions and responses by the LARM Board to our concerns outlined below will determine our recommendations to our respective governing bodies for their ultimate determination regarding LARM membership in the future.

As municipal officials from cities and villages that are members of LARM, we **STRONGLY OPPOSE** recent actions taken by the LARM Board which effectively separate LARM from the League of Nebraska Municipalities.

- 1) We strongly oppose LARM as a non-profit corporation (LARM, Inc.) as filed (by Michael Nolan as the Incorporator) with the Secretary of State in October**
We **STRONGLY OPPOSE** the motion passed by the LARM Board at its Sept. 27, 2017 meeting authorizing LARM's contract counsel to file the necessary documents with the Nebraska Secretary of State **to designate LARM as a distinct non-profit corporation.**
- 2) We support LARM as provided in the current Interlocal Agreement adopted by all LARM members**
We **SUPPORT LARM** as provided in the Interlocal Agreement that created and continues to define the structure of LARM, with the Executive Director of the League of Nebraska Municipalities serving as the "Administrator" of LARM.
- 3) We oppose the LARM Board assuming duties as the "Administrator" in violation of the current Interlocal Agreement adopted by all LARM members**
We **OPPOSE** the motion passed by the LARM Board at its Sept. 27, 2017 meeting, stating that **"the LARM Board assumes for itself the duties and responsibilities of the Administrator"** which is in violation of the Interlocal Agreement.
- 4) We strongly oppose LARM's attempt to appropriate the name "League" while at the same time attempting to effectively separate from the "League" of Nebraska Municipalities**
We **strongly OPPOSE** the motion passed by the LARM Board at its Sept. 27, 2017 meeting authorizing LARM's contract counsel to file the necessary documents with the Nebraska Secretary of State **to establish "League Association of Risk Management" as LARM's trade name with "New Owner: Michael Nolan."**

5) We support negotiations for a new agreement between LARM and the League

We SUPPORT: 1) the Executive Director of the League of Nebraska Municipalities as the Administrator of LARM, and 2) fair compensation for the use of the League's "brand" and League staff time and services provided to LARM, in consideration of the fee LARM pays to the League.

6) We strongly support LARM remaining a member of NLC Mutual Insurance Company (NLC Mutual)

We strongly SUPPORT LARM's membership in NLC Mutual in order to receive services and ensure the option of purchasing reinsurance in the future if needed.

7) We strongly oppose the hiring of legal counsel to "prosecute LARM's alleged claims for financial losses" and litigate governance issues

We strongly OPPOSE the motion passed by the LARM Board at its Dec. 7, 2017 meeting to "engage attorney Dave Domina for the limited purposes to prosecute LARM claims for financial losses and declaration of rights concerning governance against the League of Nebraska Municipalities (LONM)." The LARM Board has not identified any actual losses and any "governance" issues between the League and LARM should be negotiated, not litigated.

8) We request the required meeting of "participating members" to vote on open board positions at the League 2018 Midwinter Conference

There have been vacancies on the LARM Board for over a year. There will be several open seats on the LARM Board due to term limits. Since the overwhelming majority of LARM members are municipalities, we respectfully request a meeting of members at the League 2018 Midwinter Conference, scheduled for Feb. 26-27 at the Cornhusker Hotel Marriott.

The actions and responses by the LARM Board to our concerns outlined below in more detail will determine our recommendations to our respective governing bodies for their ultimate determination regarding LARM membership in the future.

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DETAILED INFORMATION ON EACH POINT:

1) We strongly oppose LARM as a non-profit corporation (LARM, Inc.) as filed (by Michael Nolan as the Incorporator) with the Secretary of State in October

"Articles of Incorporation of League Association of Risk Management, Inc.", dated Oct. 6, 2017 were filed with the Nebraska Secretary of State, **Michael Nolan, Incorporator**. This filing continues to cause incredible confusion across the state and generate numerous questions because of serious concerns by LARM members and municipalities now considering joining LARM!

Recent actions by the LARM Board indicate that **LARM needs more TRANSPARENCY**, not less! There would be less transparency with a non-profit corporation which might NOT be deemed to be subject to the Open Meetings Act or the laws governing public records!

2) We support LARM as provided in the current Interlocal Agreement adopted by all LARM members

The Interlocal Agreement approved by all LARM members requires LARM's office to be in the League building in Lincoln, Nebraska. **Like us, an overwhelming number of municipalities joined LARM because of its relationship with the League.** The League created LARM as an important service for member cities and villages. The Interlocal Agreement which establishes and governs LARM is *entitled "Agreement for the Establishment and Operation of the League Association of Risk Management Under the Intergovernmental Risk Management Act and the Interlocal Cooperation Act, State of Nebraska."*

3) We oppose the LARM Board assuming duties as the "Administrator" in violation of the current Interlocal Agreement adopted by all LARM members

The Interlocal Agreement provides that the "Administrator" of LARM is the Executive Director of the League of Nebraska Municipalities, NOT the LARM Board. Every "participating member" of LARM has to agree to change the Interlocal Agreement. **We do not think the LARM Board can OR SHOULD be the "Administrator" of LARM** due to: a) the need to maintain a close relationship between the League and LARM; b) recent actions taken by the LARM Board; c) the LARM Board's ongoing noncompliance issues with several key provisions of the Interlocal Agreement; and d) misrepresentations made by LARM representatives to LARM members and others.

4) We strongly oppose LARM's attempt to appropriate the name "League" while at the same time attempting to effectively separate from the "League" of Nebraska Municipalities

The "Application for Reservation of Corporate Name" is dated Sept. 11, 2017, before LARM Board approval, and was filed with the Nebraska Secretary of State by Andrew Joyce, LARM Attorney. The "Notice of Transfer of Reserved Name of Non-Profit Corporation" was filed Oct. 6, 2017 with the Nebraska Secretary of State with **"New Owner: Michael Nolan."** **We OPPOSE the trade name filing because it is clearly intended to be part of the strategy to separate LARM from the League!**

5) We support negotiations for a new agreement between LARM and the League

Thankfully, the LARM Board at its meeting on Sept. 27, 2017 did NOT declare the 164 Interlocal Agreements of LARM members a "legal nullity," as proposed in agenda item D.2.3. Following serious concerns raised about the consequences of doing so, this agenda item was amended to revise the current version of the **"Administrative Services Agreement"** between the League and LARM. We SUPPORT 1) the Executive Director of the League of Nebraska Municipalities as the

“Administrator” of LARM, as provided in the Interlocal Agreement; and 2) fair compensation for the use of the League’s “brand,” League staff time and services provided to LARM, in consideration of the fee LARM pays to the League. We understand that the League has been prepared and willing to renegotiate the agreement since FY 13-14.

6) We strongly support LARM remaining a member of NLC Mutual Insurance Company (NLC Mutual)

We understand that the League Executive Board continues to sponsor LARM to assure membership in NLC Mutual in order to receive services and have the option of purchasing reinsurance from NLC Mutual in the future. **Initially, LARM joined NLC Mutual because no other reinsurer would provide reinsurance for LARM. Although LARM is no longer a “purchasing member” of NLC Mutual, LARM may decide to be a “purchasing member” in the future or may become a “purchasing member” if other reinsurers again would decide not to provide reinsurance to LARM.**

7) We strongly oppose the hiring of legal counsel to “prosecute LARM’s alleged claims for financial losses” and litigate governance issues

The LARM Board and the Executive Director of LARM (Mike Nolan) have not identified **ANY** losses, much less losses warranting costly. The “governance” issues need to be resolved by negotiations with results consistent with the Interlocal Agreement! As of Nov. 27, 2017, there were 167 members of LARM; 133 were municipalities; and 116 of those 133 also are League members! **Clearly, municipalities will be paying for BOTH SIDES of this unnecessary legal action!! This is UNACCEPTABLE!!**

8) We request the required meeting of “participating members” to vote on open board positions at the League 2018 Midwinter Conference

For several years, LARM has not complied with the Board election procedures required in the Interlocal Agreement, entitled “*Agreement for the Establishment and Operation of the League Association of Risk Management Under the Intergovernmental Risk Management Act and the Interlocal Cooperation Act, State of Nebraska*,” which provides, in part:

“8.1.4. Board election procedures shall be as follows;

8.1.4.1. A nominating committee shall recommend candidates for the Board to the members. The nominating committee shall consist of the chairperson of the Board, an individual from a participating member selected by the Board and the Administrator. **Additional nominations shall be requested from participating members at the meeting.**

8.1.4.2. **Each participating member may cast one vote for each of the open Board positions.”**

Relevant definitions in the Interlocal Agreement include the following:

“3.15. **Participating member** or participant shall mean a member of LARM for that period of time from its admittance into this agreement until that member’s participation is terminated either voluntarily or involuntarily.”

“3.13. **Member**, in the context of a member of LARM, shall mean any municipality or other public agency whose application for membership has been approved by the Board and that has lawfully entered into this agreement.”

Several provisions relating to an “annual meeting” were deleted when the Interlocal Agreement was last amended on Sept. 24, 2014, but fortunately it still has the requirements noted above.

In addition, **LARM’s Bylaws** contain several references to an “**annual meeting of members**” even though the LARM Board did eliminate several references to an “annual meeting” when the Bylaws were last amended on Dec. 17, 2013. (Several sections of the Bylaws conflict with the Interlocal Agreement but the following sections are clear.)

Article I, Section 2.1 provides, in part: “**Additional nominations shall be requested from the floor of the meeting from participating municipalities.**”

Article IV, Section 4 provides, in part: “The Chairperson shall preside at all meetings of the LARM Board of Directors and **annual meeting** of all members of LARM....”

Article IV, Section 6 provides, in part: “The Clerk or his or her designee shall attend all meetings of the Board of Directors and LARM and **annual meeting** of all members of LARM....”