

**LIBRARY COMMITTEE FINAL REPORT:  
THE FREE LIBRARY OF NEW HOPE & SOLEBURY  
FUNDING AND OVERSIGHT ISSUES**

**COMMITTEE MEMBERS**

Noel Barrett, Solebury Supervisor  
Robert McEwan, Solebury Supervisor  
Dennis Mankin, Solebury Resident  
Kay Reiss, Solebury Resident  
CL Lindsay, Solebury Resident

**EXECUTIVE SUMMARY**

Given that the Township of Solebury has provided significant financial support to the Free Library of New Hope and Solebury (hereinafter the FLNHS)—\$120,000 in both 2019 and 2020 with an ask of \$170,000 for both years—this committee was tasked with examining the contours of the relationship between the two entities. Our goals were to define the legalities and obligations under the current relationship, and to examine what other funding models are available.

This committee was formed after a Supervisor sponsored forum designed to obtain community input on the requested funding increase. The Forum was well attended by Solebury residents who strongly voiced their support of the library.

A key tenet of this committee’s work rested on the assumption that in order for Solebury to continue to annually invest such a large sum in a local non-government entity, higher levels of accountability and oversight would be required.

## KEY FINDINGS

1. The FLNHS has repeatedly stated that Solebury's per capita funding levels are lower than those of the surrounding townships (the FLNHS cites the fact that Solebury contributes \$14.60 per capita while other townships contribute an average of \$25.96 per capita to local libraries) as justification for an increased contribution. This comparison is misleading. The committee surveyed nearby libraries. Yes, many municipalities do fund their local libraries at a higher rate than Solebury does, however in all but one of those instances the libraries being funded were, in varying degrees, owned and operated by the townships themselves. In other words, the comparison of the per capita rate shows that municipalities that have incorporated their libraries into the local government in one form or another provide a higher per capita rate as compared to Solebury.
2. The FLNHS is somewhat atypical in that it receives funding from both the Borough of New Hope and the Township of Solebury. There is currently no written agreement between the Borough, the Township and FLNHS formalizing the funding arrangements. The Pennsylvania statutes do not require an agreement in situations where two or more municipalities simply financially support a library. In instances where multiple municipalities own and operate a library together, an agreement is required.
3. Both the state statutes about municipal funding of local libraries and the FLNHS's own bylaws tie financial support to the Township's ability to appoint members to the FLNHS's Board of Directors. But this is not an effective way for the Township to exert oversight on the FLNHS. Because once appointed to the Library's Board, by law, those Board members are beholden to act in the best interest of the Library, not the Township.
4. The current funding model, that of an unrestricted donation to the FLNHS, does not offer the Township of Solebury any level of control or oversight over how effectively the Library is serving the community.

5. The Pennsylvania Laws that govern municipal support of libraries offer a number of other potential funding models, all of which would give the Township more oversight of the FLNHS's budget. To that end, it is the opinion of this committee that the Township should consider shifting its relationship with the FLNHS. In the short term this could take the form of a "contract for services" arrangement. In the longer term the Township should explore converting the FLNHS to some level of municipal ownership.

### **COMMITTEE'S PROCESS AND FINDINGS**

The FLNHS is an independent non-profit institution which Solebury Township has long supported financially. That support has grown steadily over the years, doubling in the last few years to the current level of \$120,000. The FLNHS has for the last two years requested an increase in funding to \$170,000.

This committee was formed by the Solebury Board of Supervisors in March following the results of a questionnaire and a community forum both held to help them determine the proper level of funding for the FLNHS. One of the issues raised during this dialogue is that of oversight of taxpayer funds to the FLNHS when there is no direct involvement in or oversight of the management and structure of the library.

To that end, the Committee:

- researched the history of the Township's financial contributions to the Library, and how it has affected programming and operations of the Library;
- evaluated how other municipal library institutions are organized and operated (including funding levels and sources);
- considered the funding options allowed under Pennsylvania laws governing libraries and compare those to the current structure of the library.

With this information it has provided options for the operating structure of the Library and addressed several questions posed by the Solebury Supervisors. Each of the topics addressed are described in brief in the following section. A detailed discussion of each is found in the corresponding appendices, which should be read in detail for the fullest understanding of our findings.

## **HISTORY AND FINANCES OF THE FLNHS**

The FLNHS is financially sound. It currently has an unrestricted endowment of around \$1 million and it owns its building. Its own audit lists the FLNHS's net worth at around \$2 million. Its operating budget has remained fairly constant over the last few years, and it has always been able to meet that budget through a combination of municipal and state contributions, grants, fines and fundraising. It has ended each of the last two years with a surplus.

The most significant finding of our review of the FLNHS's finances is the change in the mix of income to meet its operating expenses. Since 2018 the percentage of the budget paid by government funds has grown from 57% to 71%, while the share paid for by FLNHS Board's fundraising efforts has fallen proportionately, from 32% to 20%. If Solebury had provided the additional \$50,000 per year for the next 3 to 5 years as requested, government sources would be paying 90% of the Library's operating expenses and fundraising only 5% for those 3 to 5 years.

At no point, during their requests for funding or in our many conversations with its leadership, did the FLNHS establish that increased funding would allow additional services, or that it would prevent cuts in the current level of services. A Library representative acknowledged to the committee that the sole purpose for seeking additional money was to allow the FLNHS Board to use their fundraising proceeds to build their endowment. The rationale for this is that the FLNHS could then use the additional income generated by the larger endowment to give them greater independence from municipal funding. It's important to note that, even with a much larger endowment, the FLNHS would still expect the Township to maintain its annual funding of \$120,000.

A detailed analysis is found at Appendix A.

## **COMPARISON WITH LIBRARIES IN OTHER MUNICIPALITIES**

The Library has repeatedly compared the municipal funding provided by Solebury to that given by other municipalities to libraries located in their jurisdictions and pointed to the disparities in funding levels to justify their requested funding increase. Through conversations with the leadership in other townships and reviews of the municipal budgets, the Committee looked at five other libraries in Bucks County to see if there were any factors which could explain the differences in funding levels. It found one important distinction—in all but one instance, the libraries are incorporated into the township government. And even in that one case where the library remains nominally independent, the township both owns the library building and exerts considerable oversight over the Library budget . To the committee this is telling, for where such large amounts of tax dollars are spent, the municipalities own the assets and directly control the budgets of the libraries. The FLNHS, by contrast, is completely independent, owns and controls all its assets, and does not present its proposed operating budget to the Solebury Supervisors.

A detailed description of the discussions held with officials in other libraries is at Appendix B. A summary of the findings of this research is provided on the next page.

<b>Library</b>	<b>Structure</b>	<b>Board</b>	<b>Budget/ Municipal Contribution</b>	<b>Tax Type</b>	<b>Fundraising</b>
<b>Northampton</b>	Township Department	Advisory Board Appointed by Board of Supervisors	\$1,033,500/ \$986,000	Dedicated millage	\$25,000
<b>Upper South-hampton</b>	Independent but Board of Supervisors approves budget	Operating board appointed by Board of Supervisors	\$680,000/ \$588,000	Dedicated millage	\$550,000 capital campaign
<b>Lower South-hampton</b>	Independent but budget is part of township budget, approved by Board of Supervisors; employee's benefits through township	Appointed by Board of Supervisors	\$740,000/ \$640,000	General fund transfer	\$45,000
<b>Morrisville</b>	Township department	Advisory Board Appointed by Board of Supervisors	\$242,000/ \$178,000	Dedicated millage	None
<b>Warminster</b>	Township department	Advisory Board Appointed by Board of Supervisors	\$855,646/ \$631,447	Dedicated millage	\$3,000

## LEGAL ANALYSIS

### No Agreement is Legally Required Between New Hope & Solebury

There is no legal requirement that there be an agreement between the Borough of New Hope, Solebury Township and the FLNHS formalizing the current shared funding model. The only place where the Pennsylvania Statutes discuss any kind of joint funding for libraries is in 24 PA.C.S. §9320. There they require an agreement only in instances where municipalities “unite in establishing and maintaining a local library.” That is not the case here, where two municipalities simply provide funding to an independent, private non-profit. From the Statutes’ silence on such a funding model, we can infer that there is no legal requirement for an agreement. This is reflected in the practices of a similar situation in Chester County, PA. The Kennett library serves, and receives financial support from, eight different municipalities and there is no formal agreement between any of the entities involved.

### Municipal Appointee

The Pennsylvania Statutes and the bylaws of the FLNHS both state that, under the current funding model, the Township has the right, but not an obligation, to appoint members of the FLNHS Board of directors. 24 PA.C.S. §9318 at section (1)(ii) states that “If two or more municipalities contribute to the establishment of, maintenance of and aid to a local library, the municipalities may appoint a maximum of nine members to serve on the board as they mutually agree.” Later in the same statute at section (3) the law stipulates that “[t]he municipal officers of a municipality shall not appoint more than two members of the local library board if the municipality maintains or aids a local library that was established prior to June 14, 1961.” Since the FLNHS was founded prior to 1961, that section applies.

Notice the use of the word “may” rather than shall” in section (1)—meaning the Township could chose to appoint a “mutually agreed” upon number of members to the FLNHS, but per section (3) that number shall be no more than 2 FLNHS board members.



This is also reflected in the FLNHS's own bylaws, which state "municipal officers of each municipality aiding the maintenance of the Library (the "Municipal Officers") may appoint a maximum of two qualified Trustees (the "Municipal Appointments") as openings are created on the Board ...". This section of the bylaws was changed by the FLNHS at their March 2020 meeting. The previous version used the word "shall", creating an obligation on the part of the Township. This new version also added the term "qualified" which is problematic. It's unclear which entity—the municipality or the FLNHS—gets to decide whether or not someone is qualified. If it is the FLNHS that gets to make the final call on qualifications, then the Township's ability to appoint someone of its choosing to the FLNHS Board is essentially nullified.

Even assuming that the Township does have the ability to appoint any candidate of its choosing to the FLNHS Board, such an appointment doesn't give the Township any real oversight or ability to hold the FLNHS financially accountable for the way it spends the Township's donated funds. This is because once a municipal appointee takes a seat on the FLNHS Board they are, by law, required to act in the interest of the FLNHS, not the Township. The Pennsylvania Statutes regarding the duty of a non-profit board member at 15 PA.C.S. § 5712 states that they must act "in good faith, in a manner he reasonably believes to be in the best interests of the corporation".

### Exclusive Control of Funds

In addition, 20 PA.C.S. § 9318 states that "[a]ny money appropriated for the establishment or maintenance of a local library and all moneys, if any, received from other sources for the use of the library shall be under the exclusive control of and disbursed under the direction of the board." This means that, once funds are given to the FLNHS by the Township, decisions about how to spend those funds are entirely up to the library's board of directors—not the Township.

## Reporting Requirements Under the Current Funding Model

20 PA.C.S. § 9318 requires that libraries which receive funds from a municipality, annually provide that municipality with an accounting of how the municipal support was used by the Library and a detail of the libraries collection, use rates and buildings. It also requires that the report contains records of “Any moneys received by the library from the municipality, “Any disbursements of moneys received by the library from the municipality”, and “The accounts of the treasurer of the board, which shall be audited in the same manner as other municipal expenditures.” Although the FLNHS provides budget information and some information about its programming to the Township, it is not in compliance with the reporting requirements laid out in the statutes.

## Other Potential Funding Structures

Because the current funding model offers little or no oversight, even with a municipally appointed member serving on the FLNHS Board, the Township should strongly consider changing to another method allowed under Pennsylvania Law. The potential alternate funding models are:

### 1. Dedicated Levied Library Tax

A municipality can, via majority vote determined at a special election, levy a (minimum 1 1/2 mil) tax specifically for a local library. But the way the statute is written, it seems that the passage and collection of a library tax is meant as a tool for the creation of a municipally controlled library, rather than as a means to support a separate entity such as the FLNHS. Most significantly, the statutes state that after the levy is approved by the voters the township must “Appoint a board of library directors to have exclusive control of the library and library tax revenue as provided in section 9318 (relating to local library governance).” There are some conflicting clauses in the statute as written, and some of the ramifications of instituting a levied tax are unclear. But it is safe to say that, if a specific tax is collected, Solebury will be required by law to take much more direct control of the FLNHS.

## 2. Contract for Library Services

There is an exception to the “levied library tax = municipal control” formula discussed above. The Pennsylvania Statutes allow a municipality to “contract with the managers or owners of an existing local library for public library service to the residents of the municipality, whether the library is located in the same or another municipality.”

The payment to the library can be funded out of general tax funds or from a special library tax. If the contract is funded from a special library tax, all of the proceeds of the tax must be used for the maintenance and aid of the library.

Entering into a service contract with the FLNHS may offer the Township an attractive combination of flexibility and the ability to ensure some level of real-time accountability, while also offering the FLNHS a predictable fiscal relationship with the Township.

## 3. Municipally Operated & Owned Library

Finally a township may operate a library itself, owning the real estate and resources and employing the staff directly. There are restrictions about creating competing libraries. The Statutes state that “no new library may be established under the provisions of this chapter in any municipality where there is a local library which: (i) is open to the use of all the residents of the municipality; and (ii) meets the minimum standards recommended by the State Librarian as conditions for participation in State aid.” This means that the establishment of a Township operated library would involve a coordinated effort and hand-off between the Township and the FLNHS (and quite possibly the Borough of New Hope).

A more thorough discussion is included as Appendix 3.

## CONCLUSION

Based on our research the committees finds:

1. The current funding model of the Library although viable, is disproportionately supported by state and municipal funding (71% under the current donations and 90% if the additional \$50,000 a year were donated). This proportion is high given the fact that the funds are made as an unrestricted donation. It is also noted that the Township has not requested information from FLNHS on how the funds are utilized in order to ensure that taxpayer money is being spent responsibly.
2. The comparison with municipal funding levels in other townships is misleading, since it overlooks the differences in governing structures. In reviewing the funding levels it became clear that the greater the taxpayer funding levels, the more control the municipal authorities had. In most cases the libraries in those other municipalities are part of the Township, which owns the assets and controls the budget. The norm appears to be a continuum whereby the more taxpayer money is provided, the more municipal control is exerted, consistent with the governing authority's fiduciary responsibility to the taxpayers to ensure tax dollars are used appropriately.
3. As taxpayer funding has grown, the supervisor's fiduciary duty may require additional oversight and control of the operations of the Library. Absorbing the library into the municipal government seems to be the norm at the levels of funding that the Borough of New Hope and the Township of Solebury currently provide to the FLNHS.
4. Although both the law and the Library's by-laws provide for the appointment by the Township of two members to the Library Board, such an appointment does not provide effective oversight and control, since once appointed, the appointed member's fiduciary duty would be to the Library, not the Township. And once funds are appropriated to a library, that entity alone controls how they are spent.
5. The Pennsylvania Statutes provides for more direct municipal governance, concurrent with more taxpayer funding. The statutes also allow (at least under the dedicated library tax provision) for the possibility of a municipality contracting for Library services with an existing library. Although we could find no example among the libraries we examined in Bucks county of a municipal contract for Library services, a contract arrangement

could provide for more control and accountability and might be an option worth exploring.

6. There appears to be no legal requirement under the current structure, for a formal agreement between the New Hope Borough and Solebury Township regarding the Library, since the FLNHS is an independent organization, not founded by or controlled by those municipalities.

## **APPENDIX 1**

### **BRIEF HISTORY OF LIBRARY & THE TOWNSHIP'S FINANCIAL SUPPORT**

The Free Library of New Hope Solebury is an independent, non-profit institution created in 1918 to serve local residents.

Currently, the FLNHS has three full-time and two part-time employees, as well as volunteers. Its nine member Board, in addition to general oversight, also is charged with raising funds. The programs the FLNHS provides are varied, and while it is difficult to find consistent data (the State Librarian compiles data but aggregates it in a manner which is inconsistent with that given to them by the FLNHS), the FLNHS's internal figures show a significant increase in services and visits in the last two years (visits up 39%, programs increased by 42% and attendance up 43%).

In 1974 the FLNHS moved into its current location at 93 W Ferry Street in New Hope. In 2015-16 the FLNHS undertook a significant renovation at that location, paid for by a combination of grants and a capital fundraising campaign. Some years ago, 1.5 acres of the Cintra property (at 181 W Ferry Street, across from the high school) was promised to the FLNHS as a possible building site for a new expanded facility. Any new building would be funded from a capital campaign (although there appear to be no immediate plans for such a project).

#### **SOLEBURY TOWNSHIP CONTRIBUTION**

Over the last ten years, the Township's contribution has doubled, to its current level:

Year.	Amount
2011	60,000
2012	60,000
2013	60,000
2014	60,000

2015	90,000
2016	90,000
2017	100,000
2018	100,000
2019	120,000
2020	120,000

For 2019 the FLNHS requested its funding level be increased to \$170k. The Township increased its contribution from \$100,000 to \$120,000 specifically noting it was for that year only. The FLNHS made a similar request for 2020, but the Township budget was passed with no increase over the \$120k.

The Township's contribution is funded from property taxes, equaling a millage of .491, which equates to about \$120k/yr. This millage is not a voter-approved library tax, but a portion of general revenue millage designated for funding the Township's contribution to the library.

#### FINANCIAL BACKGROUND

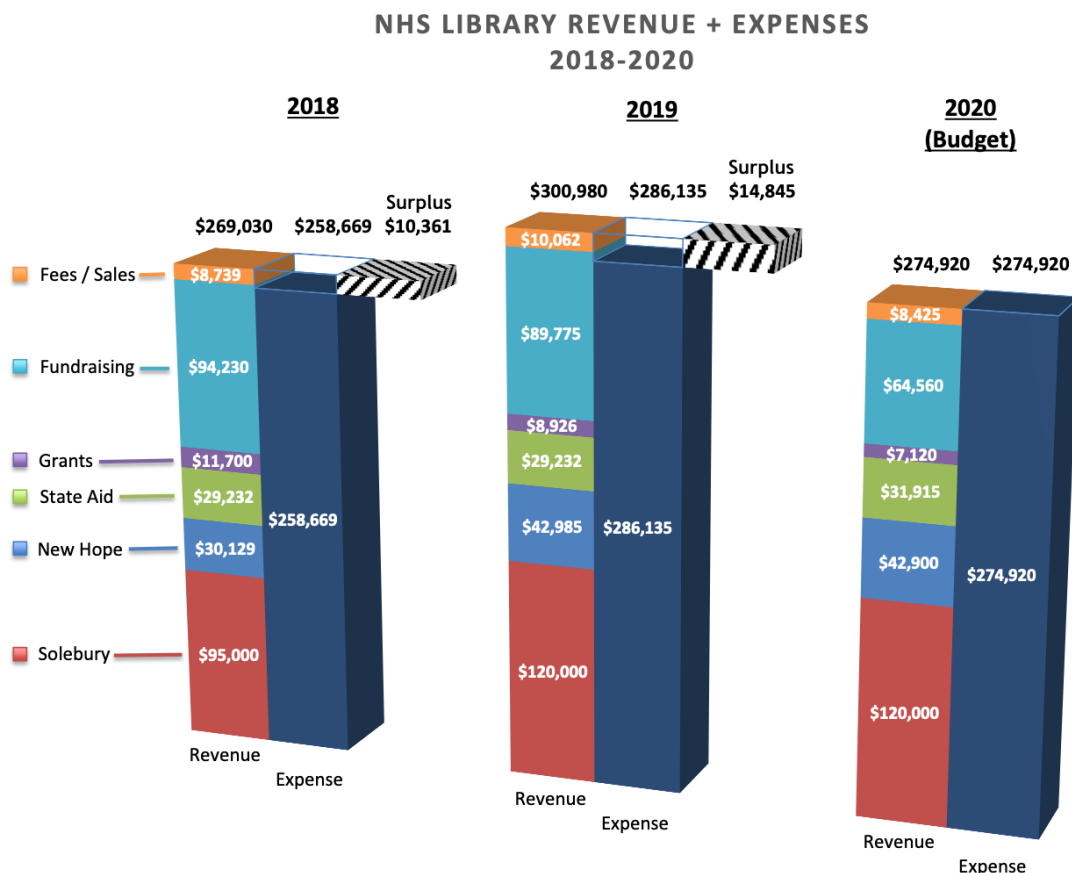
The FLNHS has for many years been supported financially by both New Hope Borough and Solebury Township, as well as receiving state aid. The balance of its budget has in the past been met largely through fundraising efforts, both annual appeals and Board-sponsored events.

The financial reports from the FLNHS's own figures list income and operating expenses in their entirety. Because it is not possible to attribute any particular expenditure to the Township's contribution, we cannot determine with any specificity to what extent any increases in the Township contribution may have resulted in what particular program or service to Solebury residents. But we can look at how the funding mix has evolved.

Since 2015 The FLNHS's budget has remained fairly consistent, although the share of funding has shifted. 2018 the percentage of the funding from the various sources was: Solebury Township (36%); State (10%); New Hope (11%); fundraising (32%); fees/grants/gifts (9%); and endowment withdrawal (2%).

In the last few years, the proportions have changed. In the Library's 2020 operating budget, the share of funding is: Solebury Township (44%), State (11%), New Hope (16%); fundraising (20%); fees/grants/gifts (7%); endowment withdrawal (2%)

As these figures show, the Library is on sound financial footing, and indeed had a surplus in the last two years. In addition, the FLNHS entity owns its building and collection along with other assets (including a \$1 million unrestricted endowment fund) giving the FLNHS a net value of \$2,000,000. Its fundraising efforts have been consistently successful, which, combined with municipal and state contributions, have always allowed the Library to meet its budget.





## FLNHS REQUEST FOR INCREASE TO SOLEBURY CONTRIBUTION

In 2019, and again in 2020, the FLNHS Board requested that Solebury Township increase its funding level by \$50,000 to a total of \$170,000, for the next 3 to 5 years, in order for the FLNHS to build its endowment so that it could become “self-sustaining.”

Placing this increase in the Township’s contribution into the budget revenue and expense projections shows that it would transform the funding model from a shared one to one in which government would fund virtually the entire FLNHS budget. Now 71% of its budget comes from government sources. If Solebury increased its contribution to the requested \$170,000, government funding would pay 90% of the FLNHS’s operating costs for the next 3 to 5 years, with gifts, grants and fees making up another 5% and fundraising 5%.

## **APPENDIX 2**

### **NEARBY LIBRARIES FUNDING LEVELS AND MODELS**

#### NORTHAMPTON LIBRARY

Diane Remington, Director 215 357-3050

The Township funds the Library with a dedicated tax rate of 1.72.

There is a Township Supervisor assigned to the Library who attends most meetings of the Advisory Board. The Township does not ask for any special reporting beyond the annual report that the State collects.

All employees are Township employees and the Township owns the building. Some financial aspects of the Library, unrelated to the hiring of staff, are made independent of the Township but require an additional audit. Every applicant to the Library's Board of Directors is interviewed by the Supervisors. It is a 7 person Board that meets 9 times per year. The Township has fairly tight control over the finances of the library. For example, last year a staff member died in April and the Township refused the Director's request to fill that position and instructed her to use that money to pay for the RFID system.

#### UPPER SOUTHAMPTON LIBRARY

Kim Ingram, Director 215 322-1415 x100

This is an independent community Library that is located in a Township of 15,150 people. Their operating budget is \$680,000 and they receive \$571,000 from the Township and \$56,000 from the State.

The Township owns the building and the Supervisors pay for all exterior costs and repairs such as landscaping, sidewalks, plowing, new roof, etc. The Library pays for any interior renovations through fundraising.

The amount of money that the Supervisors provide is determined every year based on the Library budget including anticipated increases. The Library presents the budget and the Supervisors provide the needed amount.

The Board is an operating Board and when there is an anticipated vacancy the Library Board recruits new members and interviews them and then sends the names of the people they are recommending to the Supervisors and the Supervisors appoint the recommended Library Board members.

#### WARMINSTER LIBRARY

Tracy Reed, Director

The Library receives funds via a dedicated millage of 1.85 and that determines the budget the Librarian has to work with for operating expenses plus the state funding and any grants they are able to procure. There is also Friends group that raises some money to purchase needed items.

The Library is a now a Department of the Township and all staff are town employees. Nine years ago the Library was an independent non-profit but requested to be made a Department so they could provide health insurance for the staff. Any staffing changes—adding a new position or changing the hours of a current position—need to be approved by township manager.

The building was built through bond issues.

There is a Library Advisory Board appointed by the Supervisors. The members are chosen every two years and they can reapply at the end of their terms. The Library does not make any recommendations for the Advisory Board. It is an active board of Library advocates which meets monthly and discusses trends in the community and suggests programs. Many of the members are also volunteers in the Library. The board functions more like a focus

group than any kind of operating board. One Township Supervisor is the liaison and regularly attends the Advisory Board meetings.

#### LOWER SOUTHAMPTON TOWNSHIP

Dennis Stranz, Director, 215 355-1183

Last year the Township budget included \$585,000 for the Library. At one time there was a millage but the Township discontinued it. It is now a donation from the Township's general fund.

The Township owns the Library building and has a capital reserve to cover repairs. The Library is not a department of Township Government and the Library employees are not employed directly by the Library. However, Library employees are provided benefits through the Township. The Township also manages the payroll for the Library. Both of these are paid for by the Library by sending part \$585,000 received from the Township back.

The Library recruits people for their Board. The Township Board of Supervisors approves them all, although it's mostly a rubber stamp.

The amount of money that the township allocates to the Library is determined every year based on budget. The Library presents their expenses and anticipated revenue and the Supervisors allocate the difference.

#### MORRISVILLE

Diane Hughes. Director

The Library was originally independent of the Borough, but the 1950's a referendum was voted on and the Library became part of Borough Government. The library is supported by a millage.

The Borough owns the building and covers all costs for the building. The Borough manager oversees the hiring process for any staff. In addition, the Township Supervisors appoint all Library Board members. If the Library finds someone who is interested they encourage them to apply to the Supervisors.

### RIEGELSVILLE

Terri Randolph, Director 610 749-2357

This Library serves two municipalities: Riegelsville and Durham Township. The combined population of both is less than 2100. There is no dedicated tax from either Riegelsville or Durham. Rather, they provide an annual amount based on what they have available. The most recent allocations are \$4200 from Riegelsville and \$4000 from Durham Township.

That year the Library was funded with the \$8200 from the municipalities, \$47,000 from the State, \$13,000 in annual appeal and additional fundraising from book sales and small events organized by the active Friends of the Library.

Riegelsville Borough owns the building and the Library is on the second floor. The first floor is township space including a community room which the Library has use of. The Library pays a share of the utilities. Recent repairs and renovations were paid for through a Keystone Grant that the Borough applied for.

Neither township appoints any Board members. Library Board members periodically appear at Durham and Riegelsville Supervisor meetings to report on programs that were held. They share their annual budget and audit with the governing bodies.

## APPENDIX 3

### LEGAL ANALYSIS OF THE CURRENT & POTENTIAL FUNDING MODELS

#### INTRODUCTION

Municipalities are, by law, allowed to financially support local libraries. The PA Library Statutes (24 PA.C.S) states:

§ 9351. Financial support for libraries authorized.

(a) Municipalities empowered to support libraries.--The municipal officers of a municipality may establish a local library or aid in the maintenance of a local library established by deed, gift or testamentary provision for the use of the residents of the municipality through:

(1) Appropriations out of current revenue of the municipality.

(2) Money raised by the levy of a special library tax. Special library tax.

This section of the document will identify issues raised by our reading of the statute governing establishment and maintenance of libraries by municipalities, particularly as they relate to the current funding model in place between the Township and the FLNHS. What are the obligations and responsibilities of the parties under the Pennsylvania Statutes and Code, as well as the FLNHS's own bylaws? Are the Township and the FLNHS in compliance with those laws and bylaws? How does the fact that both the Borough of New Hope and the Township support the FLNHS legally affect the relationship?

Further it will examine the potential other models allowed under Pennsylvania law for the Township to fund a library, should Solebury wish to change the current relationship. Those other funding models are: (1) levying a special library tax, (2) a 'contract for services' relationship between the Township and the FLNHS, and (3) the establishment and maintenance of a township owned library.

## CURRENT FUNDING MODEL—UNRESTRICTED ANNUAL DONATION

The current funding relationship is an unrestricted donation, provided annually, from Solebury to the FLNHS. Generally, the FLNHS makes a presentation to the Township outlining their financial need for the upcoming year and asks Solebury for a specific sum. Based on that proposal, the Township provides funds to the FLNHS. These donations have ranged from \$10,000 15 years ago to \$120,000 in the most recent budget. The FLNHS also makes a presentation to the Borough of New Hope who have, historically, made an annual donation to the FLNHS.

### Agreement with New Hope

The fact that both the Township and the Borough of New Hope provide support to the FLNHS raises the question as to whether or not a written agreement between the Borough and Solebury, or all three parties (the FLNHS, the Borough and the Township) is necessary. The language of the PA Library Statutes indicates that a written agreement is not needed. The Statutes do address collaborative library ventures between multiple municipalities, but it is silent on situations such as the current relationship between the Borough of New Hope, the Township, and the FLNHS.

It states in pertinent part (24 PA.C.S. §9320)

(b) Joint action by municipalities.--The following shall apply:

- (1) Two or more municipalities may unite in establishing and maintaining a local library under the terms of an agreement entered into between them.
- (2) The agreement shall be in writing and shall set forth:
  - (i) The purpose of the agreement.
  - (ii) The terms for support and control of the local library.
  - (iii) The conditions under which the agreement may be altered or terminated.
- (3) The agreement is not valid until it is:
  - (i) Accepted by a majority vote of the municipal officers of each municipality that is a party to the agreement.

(ii) Signed by the proper officer of each municipality that is a party to the agreement.

The statute refers only to instances where multiple municipalities “unite in **establishing and maintaining**” a library. The Township and the Borough of New Hope did not establish, nor do they jointly maintain, the FLNHS. The Township and the Borough merely both provide support. Therefore, the section of the PA Library Statutes seems not to apply. Because the Statute is silent on instances where multiple municipalities provide annual support to a single library, we can infer that no formal agreement is mandated.

The practices of other libraries in the region may also help to answer this question. The Kennett Square Library is a good example ([www.kennettlibrary.org](http://www.kennettlibrary.org)) That library serves the Townships of Kennett, East Marlborough, Pennsbury, Pocopson, Newlin, New Garden, West Marlborough, and the Borough of Kennett Square—all of which provide some level of financial support. The 2020 donations ranged from \$158,000 (Kennett Township) to \$2000 (West Marlborough Township). There is no written agreement between any of the supporting municipalities (and borough).

#### Township Appointed Trustee (Municipal Appointee)

Both Pennsylvania law and the bylaws of the FLNHS state that, under the current funding model, the Township has the right, but not an obligation, to appoint up to two members of the FLNHS Board of directors.

The Pennsylvania Library Statutes state (24 PA.C.S. §9318):

#### Local library governance.

(a) Board of library directors.--The following shall apply:  
(1) A local library established under this chapter or the former act of June 14, 1961 (P.L.324, No.188), known as The Library Code, shall be governed exclusively by a board of library directors as follows:



(i) Except as provided in subparagraph (ii), the board shall be composed of not fewer than five nor more than seven members.

(ii) If two or more municipalities contribute to the establishment of, maintenance of and aid to a local library, the municipalities may appoint a maximum of nine members to serve on the board as they mutually agree.

(2) The municipal officers of a municipality shall appoint a majority of the members of the local library board if the municipality maintains or aids a local library that is established:

(i) after June 14, 1961; and

(ii) by deed, gift or testamentary provision or in any manner other than under section 9351 (relating to financial support for libraries authorized) or 9352 (relating to popular subscription).

(3) The municipal officers of a municipality shall not appoint more than two members of the local library board if the municipality maintains or aids a local library that was established prior to June 14, 1961, by deed, gift or testamentary provision or by any association, corporation or group.

Parts (1) and (2) of the above statute apply only to libraries founded after June 14, 1961.

Because the FLNHS was founded prior to that date (it was officially established in 1918)

subsection (3) applies. Therefore Solebury “shall not appoint more than two members” to the FLNHS Board. It’s notable that the PA Statutes appear not to require the Township to appoint members in Part (3) as it does in Parts (1) and (2). This could be read to mean that Solebury may, but does not have to, appoint up to two members to the FLNHS Board of Trustees.

The FLNHS’s own bylaws (which could be changed by a majority vote of the FLNHS Board of Trustees) reflect the same. The bylaws state that:

The municipal officers of each municipality aiding the maintenance of the Library (the “Municipal Officers”) may appoint a maximum of two qualified Trustees (the “Municipal Appointments”) as openings are created on the Board by the leaving, resignation or removal of a Trustee living in that Municipality. No municipality shall have more than two Municipal Appointments on the Board at any given time. All remaining Trustees shall be elected by a majority vote of the Board of Trustees.

The use of the word “may” in the first sentence denotes that there is no obligation on the part of the Township to make such appointments.

There is also an issue raised by inclusion of the word “qualified” in the same sentence. “Qualified” is a vague, and undefined, term as its used in these bylaws. It’s also unclear as to which entity—Solebury, the FLNHS, some other third party—gets to decide whether or not a potential appointee is qualified. This sentence is in conflict with itself. It grants a right to the Township to make an appointment, then inserts an undefined caveat, diminishing that right. Further, it would seem that the main benefit that the Township derives from appointing a member to the FLNHS Board of Trustees is that it can choose someone the *Township* deems to be qualified and competent (see below for a discussion of the municipal appointees allegiances and duties) which makes the “qualified” caveat even more puzzling.

This part of the FLNHS bylaws was changed by a vote of their board members at their March 2020 meeting. The prior version of the FLNHS bylaws stated that “[t]he municipal officers of each municipality aiding in the maintenance of the Library (the ‘Municipal Officers’) shall appoint at least two of the trustees (the ‘Municipal Appointments’).” Note that the prior version used the word “shall” rather than “may” and did not include the concept of the appointee being “qualified”.

Some clarification might be found in the PA Code, which is not binding law per se, but lays out the state’s agency regulations. In order to receive funding from the state library system the FLNHS would need to be in compliance with the regulations in the PA Code. In the section the criteria to be used by the state librarian to distribute funding (22 PA Code §141.21) the matter of municipal appointees is addressed. There it states:

In the case of a local library established prior to June 14, 1961, each municipality which contributes to the support or aids in the maintenance of the local library shall appoint a number of members to serve on the board of library directors as is mutually agreed upon by such

municipalities, provided that no single municipality shall be required to appoint more than two board members, and provided, further, that the appointment of board positions agreed to by such municipalities shall be subject to the approval of the State Librarian.

Given that the FLNHS needs to be in compliance with the above regulations in order to secure state funding (in 2018 the FLNHS received roughly \$30,000 in state aid) it is in their best interest to comply with the PA Code.

It's also significant to note that under the PA Code the municipal appointees "shall be subject to the approval of the State Librarian." This could mean that the State Librarian has the right to approve or refuse a municipal appointment based on that person's individual qualifications, or it might mean that the State Librarian must approve the overall scheme— i.e. number of board members appointed, etc.

#### Role & Duties of the Municipal Appointee

Once the Township makes an appointment to the FLNHS Board of Trustees, the appointee is no longer beholden to the Township in any way, or obligated to take the needs or interests of the Township into account when making decisions or acting as a Trustee of the FLNHS. Even if the Township asked its appointee to act as a liaison between the two entities— perhaps reporting to the Township about whether or not the annual donation was being spent wisely—the appointed trustee would be obligated to only report that which was in the best interest of the FLNHS.

This is very clearly laid out in the PA Statutes regarding non-profit board members.

15 PA.C.S. §5103 defines "directors" as:

[i]ndividuals designated, elected or appointed, by that or any other name or title, to act as members of the board of directors, and their successors. The term does not include a member of an other body, unless the person is also a director. The term, when used in relation to any power or duty requiring

collective action, shall be construed to mean "board of directors."

Further 15 PA.C.S. § 5712 states:

Standard of care and justifiable reliance.

(a) Directors.--A director of a nonprofit corporation shall stand in a fiduciary relation to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

And, when a person joins the FLNHS Board of Trustees they must annually sign a "Commitment Letter" that states, among other things, that they "have a legal and ethical responsibility to ensure that the organization does the best work possible in pursuit of its goals."

It is tempting to think that, because the concept of municipal support and the appointment of a trustee member are linked in the Pennsylvania Statutes and Code, that the point of the appointee is to provide some sort of oversight of the FLNHS by the Township. But, as the law quoted above shows, that simply can not be. The only thing that the Township receives in return for a donation in support of the the FLNHS is the ability to chose someone to serve on the Board of Trustees that the Township deems to be competent and qualified. Once they are appointed, by law they serve the library, not the Township.

#### Control of Funds Under the Current Funding Model

Additionally, the PA statutes denote that, once funds are given to a local library, their use is entirely at the discretion of that library's board. 24 PA.C.S. § 9318 states:

**(f) Control of all funds.**--Any money appropriated for the establishment or maintenance of a local library and all moneys,

if any, received from other sources for the use of the library shall be under the exclusive control of and disbursed under the direction of the board.

This functionally prevents the Township from making an annual donation to the FLNHS, then—during the course of that year—attempting to exert any supervision regarding the use of the donated funds. In other words, once the FLNHS gets the money, it is theirs to spend.

#### Reporting Requirements Under the Current Funding Model

Finally, we note that § 9318 requires that libraries receive funds from a municipality, annually provide that municipality with an accounting of how the municipal support was used by the Library. It states in pertinent part:

Annual report.--The following shall apply:

(1) The board and any library receiving municipal appropriations shall make an annual report to the proper municipal authorities of:

(i) Any moneys received by the library from the municipality.

(ii) Any disbursements of moneys received by the library from the municipality.

(iii) The accounts of the treasurer of the board, which shall be audited in the same manner as other municipal expenditures.

(2) The annual report shall include:

(i) An itemized statement of all receipts from all sources.

(ii) All expenditures.

(iii) A description of the condition of the library and any branches.

(iv) An accounting of the volumes, maps, pamphlets and other materials of the library, including:

(A) The total number of materials in the library's possession.

(B) The number of materials added by purchase, gift or otherwise.

(C) The number of materials lost or withdrawn.

(v) The number of registered borrowers and readers.

(vi) A statement of the circulation of materials.

(vii) Any other information and suggestions as the board desires.

(3) A copy of each annual report shall be sent to the State Library.

While the library provides copies of the information relating to materials, etc. it does not appear that an accounting of the funds in the detail described by statute has in the past been provided. The accounting is a general one, with income from all sources itemized but expenditures of whatever nature listed without linking them to specific sources of income.

#### OTHER POTENTIAL FUNDING STRUCTURES

The Pennsylvania Statutes lay out a few other methods through which a municipality may fund a local library.

#### Levied Tax

24 PA.C.S §9315 details the processes and ramifications of the institution of a specific library tax within a municipality. The title of this section is “Development of Local Libraries” which denotes that the passage and collection of a library tax is meant as a tool for the creation of a municipally controlled library, rather than as a means to support a separate entity such as the FLNHS. If the monies are given directly to the library as Solebury does now, a strict reading of the statute raises the question of whether the passage of a levied tax would, at the very least, equate to a legal re-organization of the FLNHS.

#### § 9315. Development of local libraries.

(a) Vote on library tax; approval.--The qualified voters of a municipality shall determine at a special election whether to establish an annual special library tax on all taxable property of the municipality for the establishment of, maintenance of and aid to a local library under the following procedures[.]

Note the use of the word “and” in the second to last line above. The section says the voters may chose establish a library tax “for the establishment of, maintenance of *and* aid to a local library ...” Were the levied tax meant to apply in funding relationships such as the one

between the Township and the FLNHS, where support is given to an existing independent library, it would seem the “and” would be an “or”. The use of “and” could mean that all three things must be accomplished with the library taxes collected: 1) the establishment of a local library; 2) the maintenance of that library; and 3) on going aid to that library.

The statute then describes the process through which a tax may be implemented. First a petition signed by 3% of the number of residents who voted in the last general election calling for a vote on the library tax must be presented to the municipal officers. Then, within a certain time frame, a special election must be held. The statute then, delineates what actions the municipality must take if the levy passes:

- (4) If the majority of votes cast approves of the library tax, at the first meeting following the official announcement of the results of the election, the municipal officers shall:
- (i) Take the necessary steps to levy and collect the tax.
  - (ii) Appoint a board of library directors to have exclusive control of the library and library tax revenue as provided in section 9318 (relating to local library governance).

Part (ii) denotes that, if a library tax is levied, the municipality must, essentially, control the appointment of the board of trustees. Looking back to 24 PA.C.S. §9318, which is referenced above. The statute is vague, but this could be interpreted to mean that a levied tax would essentially create a new library—changing the establishment of the library to *after* the critical date of June 14, 1961—and thus a different section of §9318 would apply:

- (2) The municipal officers of a municipality shall appoint a majority of the members of the local library board if the municipality maintains or aids a local library that is established:
- (i) after June 14, 1961; and
  - (ii) by deed, gift or testamentary provision or in any manner other than under section 9351 (relating to financial support for libraries authorized) or 9352 (relating to popular subscription)

Would this change the composition of the FLNHS Board of Trustees? Rather than requiring that the Township appoint one or two of the members, then would the Township appoint “a majority of the members?”

#### Contract for Library Services

There is an exception to the “levied library tax = municipal control” formula discussed above. Further down in §9315 service contracts are discussed:

- (e) Contract for library service.--The following shall apply:
- (1) A municipality may contract with the managers or owners of an existing local library for public library service to the residents of the municipality, whether the library is located in the same or another municipality. The contract may be renewed as permitted by the terms of the contract.
  - (2) The municipal officers of a municipality may make appropriations from current municipal revenue or moneys raised by the library tax to pay the contractual obligations under paragraph (1).
  - (3) If a special library tax is levied, all income from the tax shall be used for the establishment of, maintenance of and aid to the local library with which the municipal officers have entered into contract.

This scheme allows a municipality, using either money derived from a special library tax or from general revenues, to enter into a contractual relationship with an existing local library to provide library services to its residents. It’s important to note that the statute specifically allows this type of arrangement with a library that is “located in the same or another municipality” which fits the Township and the FLNHS’s current situation.

Other than the noting that such an arrangement is allowed, the statute offers very little guidance on how that relationship would work. This means that it is probably largely up to the two entities (and the prevailing law of contracts) to determine the contours of the agreement.



Entering into a service contract with the FLNHS may offer the Township an attractive combination of flexibility and the ability to ensure some level of real-time accountability, while also offering the FLNHS a predictable fiscal relationship with the Township.

#### Municipally Operated & Owned Library

Finally, as a long-term option, the Township could operate a library itself, owning the real estate and resources and employing the staff directly.

§ 9351 of the Pennsylvania Statutes (Financial support for libraries authorized) states that “[t]he municipal officers of a municipality *may establish a local library* or aid in the maintenance of a local library[.]”

There are restrictions about creating competing libraries. 24 PA.C.S. §9315 states:

(f) **Limitation on establishment of new libraries.**—The following shall apply:

(1) No new library may be established under the provisions of this chapter in any municipality where there is a local library which:

(i) is open to the use of all the residents of the municipality; and

(ii) meets the minimum standards recommended by the State Librarian as conditions for participation in State aid.

(2) All State aid authorized under this chapter shall be given to an existing local library meeting the provisions of paragraph (1).

In practice this likely means that the establishment of a Township operated library would involve a coordinated effort and hand-off between the Township and the FLNHS (and quite possibly the Borough of New Hope). But if, at some point in time, the FLNHS outgrows its current location, and real estate becomes available in the Township, the creation of a Solebury Township managed library is a possibility.