Wednesday, February 10, 2010

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

COURTESY UNIVERSITY OF ROCHESTER

The University of Rochester is one of many institutions and nonprofits that might benefit if the Uniform Prudent Management of Institutional Funds Act is adopted, General Counsel Sue Stewart said recently. The school's Rush Rhees library is shown.

Nonprofits push for change in down times

Act could provide needed relief

BY ERIC WALTER

It's a paradox, some in the non-profit sector say: In rough economic times, when demand for their services is highest, their ability to fund those services is at its most limited.

It is for that reason some non-profits support changes to regulations governing the financial management of nonprofit organizations now before state lawmakers.

"The answer is [reform] is sorely needed," said Nixon Peabody's Michael Cooney, who represents the Rochester-based Al Sigl Community of Agencies, which serves people with special needs. "The law on this topic was adopted in 1978 and, as you can imagine, a lot has changed since then."

Already adopted by 44 states and several U.S. territories and introduced to the New York State Legislature and Senate last year, proponents say the Uniform Prudent Management of Institutional Funds Act would make it easier for charitable organizations, churches, universities, hospitals and others to make it through tough economic times while continuing to fund important programs and services. The changes were introduced to state lawmakers last year, but were sidelined due to the ongoing battles over control of the state Senate, Barry Hawkins, chairman of the National Conference of Commissioners on Uniform State Laws, said recently. The conference has organized a nationwide push for the law, proponents of which are hopeful they'll see its passage again this year.

The proposed law would update a range of provisions within New York's current statutes, which would bring the law in line with the rest of the country, Hawkins said. Chief among the new provisions would be several that allow non-profits more flexibility to continue to paying for necessary community services in tough economic times. Another would allow organizations to modify the purpose to which funds originally were set aside

Continued ...

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Continued ...

when such a change becomes appropriate, Hawkins said.

As the law in New York currently stands, expenditures by a non-profit organization cannot ordinarily fall below the total historic book value of its endowment, Hawkins said. While that is not a problem for most in flush economic times, it can create problems for many in times when the opposite is true.

An organization that awards a scholarship to a college student from a low-income family, for example, won't be helping that "student much ... if there is no money available for his sophomore year."

New changes to the law also would allow leaders of non-profit organizations to dip into the value of their endowments based on a variety of factors ranging from the rates of inflation and deflation, the overall impact of cutting funds and the reasonable expectation lost endowment value could be recouped in future years, Hawkins said.

Many related changes under the new law would be welcome, Sue Stewart, senior vice president and general counsel for the University of Rochester, said. Most investors, including the U of R, invest for total return rather than simply for income. In other words, they invest to achieve both appreciation in value as well as profits (from dividends, interest, rents, royalties, etc.). Provisions in the new law would give the U of R, for one, greater flexibility in managing those investments and, thus, in funding everything from cancer research to scholarships, she said.

"While the vast majority of the university's endowment funds have appreciated in value, some newer endowment funds that were donated when the stock market was high can be underwater now," Stewart said.

That can cause problems in budgeting, accounting and commitments, she said.

Another major change under the new law would give non-profits the ability to update or change the purpose for which smaller, older funds originally were set aside, said Hawkins. Many endowments were created to fund polio research prior to the creation of a vaccine, for example, and many cannot be altered to research other, more modern medical concerns, such as cancer without pursuing complex legal processes that only would end up eating much of their total value, Hawkins said.

A process is included in the proposal by which an organization could change the use of a fund older than 20 years, and valued at less than $250,000, without a court action and upon notifying the original lenders and the New York State Attorney General's Office. If there is no objection after 90 days, the change can be made, Stewart noted.

"After many years, the restrictions on some funds no longer make common sense, or the funds are too big to logically support their original restriction. It would be beneficial to be able to make modifications and put the funds to use," Stewart said.

Cooney, Al Sigl's counsel agreed with that assessment, but also said the requirement to notify donors is onerous and also needs to be changed. New York, he said, would be better off by adopting the uniform law endorsed by other states, which do not include the requirement.

"We seem to think in New York that when we tweak things we somehow make them better," Cooney said.

Eric Walter is a Rochester-based freelancer writer.