
MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C.

DATE: February 3, 2016

RE: Legal Status Report

This is our legal status report for the Trustees' meeting scheduled for February 8, 2016.

Threatened Litigation

Task: Eric Sutherland continues to threaten litigation against the District for alleged over collection of taxes. Specifically, he claims TABOR violations, including the 5.5% limit imposed by C.R.S. 29-1-103 *et seq.* and challenges the abatement mill levy.

Status: In anticipation of litigation, Counsel provided a confidential memorandum to the Board. Counsel is communicating with Mr. Sutherland and will update the Board with any important developments.

Action: None at this time.

Research re: Records Retention

Task: The Library District currently follows the records retention policy of the City of Fort Collins. Counsel has been tasked with reviewing and updating the policy.

Status: Counsel conducted research and delivered a memorandum to the Executive Director regarding the options for the Library District records retention policy. The policy is being developed and will be subject to Board approval at a later meeting.

Action: None at this time.

Bylaw Redraft and Update

Task: The Board requested Counsel update the bylaws to change the section of

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the bylaws requiring a treasurer. In reviewing the bylaws, Counsel noted several provisions that were inaccurate and/or in need of revision. The last bylaw revision was in November 2012 to provide for committees.

Status: Counsel is currently working on proposed revisions to the bylaws. Once complete, Counsel will send a red-line of the revisions to President Frey and Executive Director Carroll for review and comment and then distribute to the Board for review and approval.

Action: None at this time.

Endowment and Community Foundation Fund Transfer

Task: Research to determine the appropriate manner to structure a possible combination of funds between the Endowment and the Community Foundation to be administered by the Library District.

Status: Counsel discussed this matter with Ms. Carroll. It was determined that this transfer is feasible, but that Counsel will need further information regarding the terms of the gifts to appropriately structure this transaction to accomplish the goals of all parties involved.

Action: None at this time.

Trademark of STREAM

Task: Obtain a trademark for the summer reading theme STREAM.

Status: Counsel is investigating the possibility and appropriate trademark for the STREAM program.

Action: None at this time.

Important Case Update: High Plains Library District, et. al. v. Kirkmeyer, et. al.

Task: A majority of the establishing entities of the High Plains Library District (“HPLD”) approved removal of the entire Board of Trustees at once. The towns then passed a resolution appointing new trustees consisting of several town mayors, county commissioners, and the president of the school district board. HPLD and the removed trustees filed suit to enjoin their removal and replacement by the new board and obtain a declaratory judgment that the actions of the towns and county commissioners were illegal.

After a two-day preliminary injunction hearing, the Judge ordered the original Board would maintain their trustee positions until the matter is resolved. The establishing entities filed an appeal of the preliminary injunction order. The District Court litigation has been stayed pending the outcome of the court of appeals litigation.

Status: Counsel was retained by the Colorado Association of Libraries (“CAL”) to file an Amicus Brief on its behalf in the Court of Appeals. An Amicus Brief (meaning “friend of the court”), allows CAL to submit a brief explaining the impact this case may have on all libraries and the appropriate interpretation of the Colorado Library Law.

Counsel filed the amicus brief on October 9th. The amicus is limited to addressing the issues raised in the opening brief by the county and other establishing entities. Specifically, Counsel argued the appropriate process for removal of library trustees. The appointment issue will be addressed at a later point in the litigation, if at all.

The matter was fully briefed by all parties and Counsel attended oral arguments on May 26, 2015 at the Court of Appeals. On July 2, the Court of Appeals entered an Order upholding the preliminary injunction of the District Court that stated the removal of the Trustees was not for good cause. The Court of Appeals decision was appealed to the Colorado Supreme Court. The Supreme Court is currently considering whether it will accept the case.