
MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C.

DATE: July 11, 2016

RE: Legal Status Report

This is our legal status report for the Trustees' meeting scheduled for July 11, 2016.

Executive Director Search

Task: Monitor and assist with the Executive Director search.

Status: Counsel will continue to monitor the Executive Director search process.

Action: None at this time.

Records Retention Schedule

Task: Draft a records retention schedule for the District and sign on to the Colorado State Archives' special district records retention schedule. Joining the hundreds of other Colorado local government entities through adoption of the policy will provide safe harbor for any documents destroyed or otherwise not maintained at the expiration of the retention period. The Library District currently follows the records retention schedule of the City of Fort Collins. Counsel provided an abbreviated version for Trustee review, discussion, and approval at the June meeting. The District will have a condensed version of the State Archives' special districts records retention schedule that is better tailored to the functions of the Library.

Status: Counsel will file the records schedule with the State Archives and await approval.

Action: None at this time.

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Solicitation and Exhibit Policies

- Task:** The District was approached by a patron requesting an update to the District solicitation and petitioning policies and procedures.
- Status:** Counsel drafted a new solicitation and petitioning policy to better reflect the First Amendment principles that the Library is responsible to protect. While drafting the solicitation and petitioning policy, Counsel noted that the exhibit and posting policy required an update. Solicitation and exhibiting were previously in the same policy. These notions were separated into two policies in order to clarify these separate ideas.
- Action:** Second reading and possible adoption of the Solicitation and Exhibiting and Posting policy.

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.

Recently, the Supreme Court declined to accept certiorari review of the Court of Appeals' determinations concerning Trustee removal. The case was remanded back to the District Court for determination of outstanding issues, including Trustee appointment. A District Court trial has been scheduled for October 3-7, 2016.