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## MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C.

DATE: September 6, 2016

RE: Legal Status Report for September 12, 2016 Board Meeting

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This is our legal status report for the Trustees' meeting scheduled for September 12, 2016.

### Executive Director Search

**Task:** Monitor and assist with the Executive Director search.

**Status:** This matter has been completed except for preparing a contract for employment. We will follow up in that regard and provide a copy for your review and consideration, changes, or for negotiations.

**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:** The District's Records Retention Schedule was officially approved by the State Archivist.

**Action:** This matter will be removed from the Status Report in October.

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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. The policy has been addressed by the Board.
- Action:** This matter will be removed from the October Status Report.

### **2016 Election Question[s]**

- Task:** The Board approved a Resolution calling for participation in the 2016 election to address the potential TABOR refund. Formulation of the final question was postponed until the City of Fort Collins determines its approach to this matter at a meeting planned for the 6<sup>th</sup>.
- Status:** Counsel will prepare and circulate a draft election question on the 7<sup>th</sup>. The final question must be certified to the county clerk on the 9<sup>th</sup>. This will be completed by the time of the meeting.
- Action:** None required at this time.

### **Election Law Compliance**

- Task:** Inform staff and the Board of election law limitations that apply to the 2016 Ballot Question per the request of Interim Director Draves.
- Status:** We have provided the attached memorandum for staff and Board guidance.
- Action:** No Board action required.

### **Security Policy Review**

- Task:** The District will be installing security cameras at the library locations. Interim Director Draves rightly noted that the security policy should be

updated for this purpose. We will review the draft policy and suggest changes for your consideration. First reading will be in September and second reading in October.

**Status:** The draft is under review.

**Action:** First reading only.

**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.

**Status:** We were 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.

We were successful in establishing legal standards for the removal of library trustees. The case was remanded for consideration of the process for appointing the new trustees.

We have now been advised that the parties have reached a settlement and we will be unable to clarify the appointment process. We will advise you once we know what settlement has been reached.

**Action:** None at this time.

## MEMORANDUM

**TO:** Poudre River Public Library District Staff  
**FROM:** Seter & Vander Wall, P.C.  
**RE:** Fair Campaign Practices Act  
**DATE:** September 6, 2016

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This memo covers the Fair Campaign Practices Act (the “Act”) as it relates to campaign activities of staff and trustees and campaign activities on library property. The Act is codified in the Colorado Revised Statutes § 1-45-101, *et seq.*

### Basic Prohibitions of Section 117 of the Act

The Act prohibits governmental bodies from making a contribution to a campaign for public office, and from expending public moneys to urge electors to vote for or against any ballot issue or referred measure. The rule makes it impermissible for governments to use public moneys to produce campaign materials designed to increase public support for a particular ballot measure.

a. Governments are prohibited from using public moneys to support a ballot measure even when the measure is not mentioned by name in the supporting material.

b. Governments are prohibited from producing a regular report, such as an economic forecast, to advocate a particular position within that report if the report was produced using public money.

c. “Use of public money” can also include the exclusive use of publicly owned facilities or equipment, including meeting rooms, phones, fax machines, copiers, computers, or internet access. No violation of the Act occurs if both supporters and opponents of an issue have equal access to publicly owned equipment and facilities on the same terms and conditions. Therefore, library facilities and equipment that are available to all persons may be used for campaign purposes.

### Definitions

1. “Contribution” is defined as any payment, loan, pledge, gift, or advance of money to any candidate or issue committee. The definition includes anything of value given directly or

indirectly to a candidate or issue committee for election purposes. However, services provided without compensation by volunteers do not constitute a contribution.

2. “Public Moneys” is defined as any money contained in the account or fund of the state or any of its political subdivisions, such as a library district. The Colorado Supreme Court broadly defines the term “Public Moneys” and the General Assembly, when discussing the restriction on the use public moneys, refers to the money coming “from any source.”

### **Effective Date of Prohibitions**

There is a specific time at which the Act’s prohibitions take effect. Governmental entities shall not make any contribution to campaigns for or against any “local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section.” Therefore, the prohibitions do not take effect until a ballot measure has been submitted for a title to be fixed and an election has been ordered. If neither of these requirements has been met, a government is free to expend public moneys on the measure because the prohibitions do not apply.

However, if a government commits public moneys to send a communication to the voters regarding a measure to be proposed on the ballot before the Act’s prohibitions takes effect, and does not pay the bill until after the prohibition takes effect, the government will be in violation of the Act.

### **Exceptions to Prohibitions**

There are five exceptions to the prohibitions in the Act.

#### **1. Limited Expenditures of Public Moneys by Policy-Makers (Trustees)**

a. Governmental employees and board members who have policy-making responsibilities may expend public moneys to express their opinions. This may be in the form of letters, telephone calls, or other activities if the amount spent does not exceed \$50.00.

b. Elected Officials do not exceed the \$50 limit by spending time dealing with an issue. Administrative law judges have found that it is too difficult to distinguish between official time and personal time.

c. Officials do not exceed the \$50 exception by spending their own money to advocate for or against an issue.

#### **2. Responses to Unsolicited Questions**

An employee of the public entity may respond to questions about any ballot issue as long as that employee or public entity did not solicit the question. § 1-45-117(1)(a)(II), C.R.S.

An employee may agree to write a newspaper article supporting a proposed ballot measure if the newspaper has asked the employee to do so. A government agency may request information on a proposed issue from another government agency and an employee may respond. However, the public entity should keep track of all unsolicited requests for proof in case the responses are reported to the Secretary of State as a violation.

**3. Distributing a Factual Summary**

The governing body may distribute a factual summary, which must include arguments both for and against the measure. The summary must not contain a conclusion or opinion in favor of or against any particular issue. The list should present reasonably framed, legitimate positions of both viewpoints and does not have to include the best arguments available to either side. The pro and con summaries do not have to be of equal length. Even if the fact sheet does not specifically urge a voter to vote, in order to fit into the factual summary exception, language should be included that urges a voter to “decide for yourself.”

**4. Government Resolution of Support**

A governmental entity may pass a resolution taking a position of advocacy on a particular issue. The governmental entity may also report the passage of or distribute such resolution through established, customary means, by which information about other proceedings of the agency is regularly provided to the public. For example, a resolution may be posted on the agency’s website if it regularly posts other information to the public by that means. If the agency regularly does mailings to constituents, it may mail the resolution. However, any accompanying language with the resolution must be neutral and impartial with regard to the measure in question even though the resolution is not. In addition, the governmental entity cannot use paid advertising to report on the passage of a resolution or to distribute a resolution.

**5. Use of Personal Time and Money**

Officials and employees of a governmental entity may always expend personal funds, make contributions, or use personal time to campaign for or against any issue. However, employees may not work on the campaign during working hours while on the payroll of the government.

**Violation Reporting and Remedies**

An opponent’s purpose in reporting a violation may be a political one rather than a legal one. A report of a violation close to an election may produce news stories that could affect the election. Therefore, it is wise to use a conservative approach to using public moneys in connection with ballot issues.

If you have any questions after reviewing this memo, please contact Kim Seter, Esq. or Catherine Bright, Paralegal at 303-770-2700.

### **SUMMARY**

The following is a simple outline of things you may not do as Poudre River Public Library District employees and the types of things that you may do if you desire.

I. Do not:

- a. Work on any campaign during hours that you are also being paid as a library employee.
- b. Argue with anyone about the libraries' needs or changes that should or should not be made. Instead, invite them to the board meetings to express their concerns.

II. Do:

- a. Answer questions from patrons and the media concerning the campaign and proposed election question even if asked while you are being paid as a library employee. There will also be written material prepared that you can provide to individuals who have questions.
- b. Volunteer to work on the campaign on your own time if you would like to do so.
- c. Organize volunteers at library branches to deliver flyers and promote the library both in and out of the library building (Forms for volunteers to express their interest can be made available at the front desk or in other prominent places).
- d. Allow volunteers and campaign organizations to use library rooms, copiers, computers and other facilities that are available for public use for their purposes whether they are for or against a library proposal.
- e. Provide written information at the library desk and other areas promoting the library effort, but, also allowing opposing viewpoints to be delivered in the same way if anyone asks to do so.
- f. Write opinion letters to the newspapers, speak to your neighbors, friends and associates and make phone calls to likely voters.
- g. Vote and help your friends, neighbors and relatives do the same!