
MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C., Kim J. Seter

DATE: October 6, 2016

RE: Legal Status Report for October 10, 2016 Board Meeting

This is our legal status report for the Trustees' meeting scheduled for October 10, 2016.

City Request for Information re Solicitation at Council Tree

Task: The city attorney called Monday seeking information. City Council members received a threat from a patron claiming to have been removed from the library area and outside area while electioneering. Suit was threatened against the library district and city under the *First Amendment*.

Status: The attached correspondence is being sent to the City Attorney today per Council's request.

Action: None required.

Executive Director Search

Task: Monitor and assist with the Executive Director search.

Status: The executive director contract has been signed. This matter will be removed from the next report.

Action: None at this time.

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 6th of September.

Status: The question and TABOR comments were summarized and certified to the

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county clerk. The TABOR notice will be mailed tomorrow. The only "con" statement received was from Mr. Sutherland (copy attached).

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 memoranda 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 and I may have comments at the meeting if any are in order.

Action: Second reading and possible action.

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.

It now appears that the City of Greeley has become more active in this case and the settlement reported on last month may fail. We may still have the opportunity to clarify the appointment process.

Action: None at this time.

ALL REGISTERED VOTERS
POUDRE RIVER PUBLIC LIBRARY DISTRICT
LARIMER COUNTY, COLORADO

NOTICE OF ELECTION ON BALLOT ISSUE

Election date: November 8, 2016

Election hours: 7:00 a.m. to 7:00 p.m.

Local election office address and phone number: Catherine T. Bright, Designated Election Official, 7400 East Orchard Road, Suite 3300, Greenwood Village, Colorado 80111 (303) 770-2700

Ballot Title and Text:

BALLOT ISSUE 5F:

MAY THE POUDRE RIVER PUBLIC LIBRARY DISTRICT F/K/A FORT COLLINS REGIONAL LIBRARY DISTRICT KEEP ALL REVENUES FROM THE 3 MILL PROPERTY TAX LEVY APPROVED BY THE VOTERS IN 2006 WITHOUT REFUNDING ANY AMOUNT AS A CONSEQUENCE OF EXCEEDING THE REVENUE ESTIMATES CONTAINED IN THE ELECTION NOTICE MAILED TO VOTERS IN 2006 AND CONTINUE TO COLLECT AND SPEND THE TAX REVENUE AT THE APPROVED 3 MILL RATE AUTHORIZED IN 2006 WITHOUT INCREASE OR DECREASE?

| Year | Fiscal Year Spending |
|-------------------------------|----------------------|
| 2012 (actual) | \$ 10,886,844 |
| 2013 (actual) | \$ 8,661,102 |
| 2014 (actual) | \$ 8,192,870 |
| 2015 (actual) | \$ 9,255,631 |
| 2016 (current year estimated) | \$ 9,518,275 |

Overall percentage change in fiscal year spending over the five year period from 2012 through 2016: negative 12.6%

Overall dollar change in fiscal year spending over the five year period from 2012 through 2016: negative \$1,368,569

Estimate of the maximum dollar amount of proposed tax increase for fiscal year 2017: \$0

Estimate of spending for fiscal year 2017 without increase in taxes: \$9,581,700

The following is a summary of written comments IN FAVOR OF BALLOT ISSUE 5F filed with the Designated Election Official:

A YES vote on 5F reaffirms the voter-approved Poudre River Public Library District mill levy of 2006, resolves potential legal threats, prevents substantial legal expenses, and protects future library services.

This is not a new or increased tax and it is not a change to an existing tax. 5F simply reaffirms authorization for the citizen-created Poudre River Public Library District—per the original ballot language—to "...collect, retain and spend the additional revenue along with all other revenues, notwithstanding any limitation or restriction..." for the continued improvement and expansion of library services and facilities.

New questions about how to apply the statewide tax limitation law (TABOR) threaten library services, hours, programs, staffing and facilities. We do not believe a funding reduction was, or is the intent of our community. If future funding is reduced, it will negatively impact the depth and quality of library services in our community—collections, staffing, operations, maintenance, and the care of your facilities.

Poudre River Public Library District fully complied with its understanding of TABOR, Colorado tax law and the 2006 voter-approved tax measure. However, recent interpretations raise questions about money raised in excess of original projections. Voters approved this tax by a wide margin and the Library District has spent every dollar to serve our community.

- More than 1,025,000 visitors in 2015
- 160,455 library card holders in 2015
- 2,354 library programs (such as story time, summer reading & outreach) in 2015 serving over 74,000 residents
- Circulation grew from 1,100,000 items in 2006 to more than 3,225,000 items in 2015

Revenue collection and spending has been in good faith and with complete transparency. Revenues in excess of original ballot estimates have already been collected and spent on behalf of our libraries, as fully disclosed in public meetings. Annual financials can be found at <http://www.poudrelibraries.org/about/budget.php>.

In 2006, voters authorized the creation of the Poudre River Public Library District that has used tax dollars to:

- Open Council Tree Library in Front Range Village.
- Complete a major renovation and expansion of the Old Town Library.
- Increase hours of operation at Harmony and Old Town Library.
- Establish outreach programs for underserved populations.
- And, add programs for tens of thousands of children, teens and adults.

To avoid fiscal uncertainty and the threat of costly litigation that will take years to resolve, please vote YES on 5F to resolve this issue, reaffirm original voter intent, and protect the future of the Poudre River Public Library District.

The following is a summary of written comments IN OPPOSITION TO BALLOT ISSUE 5F filed with the Designated Election Official:

Prior to 2007, library services were funded by City of Fort Collins tax dollars. In November 2006, voters in what eventually became the Poudre River Public Library District (PRPLD) approved a ballot question that requested the levy of 3 mills on taxable property for a first year total \$5.8 million. The actual first year revenues were \$6.6 million. The Colorado Constitution requires that any revenue collected in excess of the estimated first year revenues must be refunded and the tax rate reduced proportionally thereafter. PRPLD is now obligated to refund all over-collected taxes to the taxpayers. However, the Colorado Constitution also provides that voters may approve an exception to the refund requirements.

This ballot question attempts to obtain such voter approval. However, PRPLD brought this ballot question forward without any explanation of the amount of refund that is owed nor the method by which the money would be refunded. This means, of course, that voters considering this ballot question really have no idea what they are voting for. For example, a possibility exists that the refund might be applied by reducing the mill levy taxed in future years. Yet, the voters have no idea if such an idea would be considered. In fact, we have no idea whatsoever if ANY refund will be granted at all.

The following points should be considered:

- PRPLD collected more tax than it had requested. The library district then refused to provide a refund or request voter approval to retain the excess. The threat of a lawsuit to enforce the Constitution is the only reason that voters have been provided the opportunity to weigh in on this subject. A 'no' vote will send the clear message that we expect the taxing entities to comply with our laws and respect taxpayers.

- Significant increases in property values has created a windfall of tax revenue for PRPLD in the past two years. Even greater increases in assessed values are forecast for the future. At the same time, the library district has no plans for any large capital expenses such as those that consumed tax revenues in previous years. The combination of these two facts means that PRPLD could EASILY afford to cut its mill levy rate in all future years without sacrificing any of the services it provides.

- To compound the injury, PRPLD has begun taxing at a rate greater than the 3 mills originally authorized! There is absolutely no legal or financial basis for this tax policy change. This was a shameful action.

- PRPLD has done nothing to arrest the loss of 5% of its tax revenues to TIF swindles.

- Because PRPLD has not budgeted for a refund or even provided a basic idea what the refund will be, there is no guaranty that a 'no' vote will actually lead to a refund. However, a 'no' vote will send a signal that the citizens of Fort Collins prefer rule of law and fiscal responsibility over the alternative.

October 6, 2016

Ingrid Decker, Esq.
City Attorney's Office
300 LaPorte Ave.
Fort Collins, CO 80521

Via Email: idecker@fcgov.com

Re: Citizen Complaint Re Removal from Council Tree Library and Front Range Village

Dear Ingrid:

A citizen has contacted City Council members and complained that he/she was not allowed to petition in or outside the Council Tree Library. You contacted me on Monday and requested this correspondence regarding the legal ownership and use of the Council Tree Library site.

The Council Tree branch is located at 2733 Council Tree Ave., Fort Collins, CO, 80525. The library is a condominium unit. It is subject to the declarations and covenants for Front Range Village Building 400 Planned Community recorded March 27, 2009 (Reception # 20090018360, Larimer County). The Library has a first floor entryway with a staircase and elevators to the library facilities located on the second floor.

All areas outside the library condominium unit are "common area" property. Activity on that portion of the property is regulated by the property owners and/or the appointed managers.

Two questions are addressed. First, can the District restrict voter registration and solicitation activities on Council Tree Library premises? Second, what are the District's obligations or rights with respect to property outside the library in Front Range Village?

Regulation of Free Speech Activities on its Property

The Library District is a political subdivision of the state. Library branches are public facilities. Use of public facilities for speech purposes is governed by the First Amendment of the United States Constitution.

Public gathering places are traditional venues for the exercise of free speech rights and a political subdivision is constrained in the ability to regulate free speech activity. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). However, a political subdivision may regulate the time, place and manner of speech so long as the restrictions are content neutral, narrowly tailored, and leave open ample alternative channels. *Id.* The First Amendment does

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Via Email: idecker@fcgov.com

Re: Citizen Complaint Re Removal from Council Tree Library and Front Range Village

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not guarantee access to property simply because it is owned or controlled by the government. *Id.* at 46.

Free speech activities may be restricted to allow the space to function for its intended purpose and may be confined to free speech zones. *Id.* Regulation of free speech activities must be reasonable and not an attempt to suppress a speaker's point of view. *Id.*

The District has published policies of general applicability governing behavior and activity at its branch libraries. Policy 3.6, Library Facility Usage, addresses behavior and activities that are prohibited within the libraries so they may function for their intended purposes. Prohibited behavior includes:

Use of the interior spaces of any Library District facility for activities not specifically authorized and arranged through Library management, including but not limited to:

- Soliciting
- Distributing leaflets, fliers, or other materials inside a library building.

Policy 3.11, Solicitation and Petitioning, prohibits the exercising of free speech rights on District property outside a designated Free Speech Zone or hindering, impeding, or blocking the passage of library patrons, employees, or visitors with solicitation or petitioning activity. This section identifies locations in which free speech activity is permitted outside each branch, including describing the location of the Free Speech Zones.

The Council Tree branch does not have a Free Speech Zone outside the library because the Library District does not control the property.

District Rights and Responsibilities Under the Condominium Declarations

Front Range Village Building 400 Planned Community is a commercial condominium development. The property outside the library condominium unit is owned by Front Range Retail Company, LLC, or its successors and assigns. All owners that purchased or occupy the building units are bound by the requirements of the Declarations.

Implications of a public library in the building were addressed in the Declarations. Section 4.03: "Not a Public Forum." This section states "It is the intent of the Declarant that no part of the Master Development be considered a public forum for purposes of the First Amendment to the United States constitution."

Section 4.03 acknowledged the presence of a library may make the condominium unit a public forum or "limited public forum" for First Amendment purposes. However, the City (now District) agreed to manage its property consistent with federal, state, and local laws, administrative policies and procedures.

Via Email: ideocker@fcgov.com

Re: Citizen Complaint Re Removal from Council Tree Library and Front Range Village

October 6, 2016

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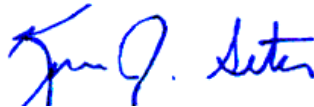
Under these Declarations, the District has the duty to manage free speech activities on its property consistent with its regulation of other branches. The District has policies governing free speech activities in and around its premises that satisfy the requirements of the Declarations.

The District has consistently enforced its policies within the library. Whether the soliciting or political activity in question is permissible in the common areas of the condominium community is not the responsibility of the District to either enforce or defend.

Please let know if you have questions or concerns about this analysis or need additional information. I would be glad to address the specific facts if you would like to share them.

Sincerely,

SETER & VANDER WALL, P.C.



Kim J. Seter

cc: Poudre River Public Library Board of Trustees
Ken Draves, Interim Director
David Slivken, Director