
MEMORANDUM

TO: Poudre River Public Library District

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

DATE: February 7, 2017

RE: Legal Status Report for February 13, 2017 Trustees' Meeting

This is our legal status report for the Trustees' meeting scheduled for February 13, 2017.

Public Speaker Limitations

Task: Several Trustees have asked whether Trustee's can offer their personal thoughts as a citizen (as opposed to a Trustee) during public comment period, particularly as their thoughts and opinions apply to the proper conduct and manner of presentation during the public comment period.

Status: Each Trustee is a 'government official,' appointed to serve a public office. As government officials, a Trustee is entitled to the widest latitude to express views on issues of policy. *Bond v. Floyd*, 385 U.S. 116, 136, (1966). The U.S. Supreme Court concluded elected officials have "an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them." *Id.* at 136-37.

As a Trustee of the Library, you are encouraged to, and protected in, your expression of personal viewpoints related to the public policy of the Board. Such public policy necessarily includes the policies governing public comment. Accordingly, a trustee does not need to clarify that he/she is speaking as a citizen, not a Trustee, in expressing a viewpoint on any issue of policy.

However, it is not wise to engage the public directly on issues raised during public comment or in a discussion of the proper manner of addressing the Board. A single trustee engaging in a dialogue with a speaker will cause confusion over the proper role and authority of a Trustee. Only the Board has the power and authority to act on patron

concerns – not a single Trustee.

Accordingly, (1) a Trustee who desires to comment on an action or proposed action of the Board should simply state his/her position during the discussion of a motion; and, (2) a Trustee who desires to make a comment about what he/she deems the appropriate manner of addressing the Board may ask for the floor at the beginning of the public comment period and state to the Board and “for the benefit of the speakers” present, that he/she is not persuaded by *ad hominem* attacks and name calling which distract from the position being espoused, or however else the Trustee wishes to state his/her position to the Board.

Important Case Updates

Sutherland Lawsuits

Task: Eric Sutherland has filed numerous lawsuits concerning tax, URA and election issues against the county, city and two school districts.

Status: We are monitoring the actions in preparation for any claims against the Library District which now seem very unlikely.

1. *Sutherland v. Poudre School District*, Larimer County District Court, 2016CV000299 – This case was dismissed on January 19, 2017. To my knowledge, no appeal has been filed.

2. *Poudre School District v. Sutherland*, Larimer County District Court, 2016CV031130 – This case remains open.

3. *In Re Petition of Poudre School District R-1*, Larimer County District Court, 2016CV31129 – This case remains open.

It is interesting that Mr. Sutherland brought actions against all of the parties that promoted tax questions (county, city and two school districts), except the Library District.

In sum, the currently pending actions are efforts by the school district to obtain a court order that the 2016 elections approving taxes and debt for are valid and final. This will remove any cloud on the ability of the school district to issue bonds.

All of these matters are instructive for the Library District. To date, they confirm the validity and correctness of the Library Trustee's actions in the 2016 election and there do not appear to be any avenues for Sutherland to bring claims against the Library District at this time.

Action: None required.

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.

A trial was set for February 6 – 10, 2017, in Greeley. However, on February 3, 2017, the parties filed a joint motion to vacate the trial indicating a settlement has been reached. We have not obtained a copy of the settlement agreement yet.

Action: None at this time. We will follow up to obtain a copy of the settlement agreement.