
MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C., Kim J. Seter, Esq., Elizabeth A. Dauer, Esq., and Cameron J. Richards, Esq.

DATE: March 6, 2018

RE: Legal Status report for March 19, 2018, Trustees' Meeting

This is our legal status report for the Trustees' meeting scheduled for March 19, 2018.

Intergovernmental Agreement Re: TIF Financing

Task: Tax Increment Financing is an economic development tool usually utilized to fund Urban Renewal Authorities. TIF financing affects the library because:

- A. The assessable value of a TIF area is determined and then fixed.
- B. The revenue derived from the library mill levy on any growth in assessable value for a period of 25 years thereafter is called the Tax Increment.
- C. The Tax Increment is diverted from the library to an Urban Renewal Authority to be used to financing public infrastructure or provide other incentives to development.

Historically, affected taxes entities had no say in the imposition of TIF. Recent laws have given taxing entities affected by the TIF a voice in whether or not their incremental tax revenue should go entirely to the URA. It is still the presumption that the new development drives the increase in the Tax Increment and should be given to the URA. However, taxing entities now have a forum to argue otherwise.

Larimer County is forming a TIF financing committee by intergovernmental agreement that will assist the County and taxing entities in developing information to fairly distribute the opportunity cost of TIF.

Task: We have reviewed and commented on the second draft of the proposed IGA and provided those comments to staff for consideration. We will bring this proposed IGA to you for discussion and consideration when it is better defined.

Action: None required at this time.

Review of Bylaws

Task: Review the District's bylaws for any changes or updates that are necessary or inconsistent with changing law.

Status: The review of bylaws was requested as part of the ongoing review of policies. We will work with the committee of Ms. Quijano, Mr. Frey, and Ms. Schultz to make appropriate and necessary revisions.

A mark-up copy will be provided to the Committee for review and comment prior to presentment to the Board.

Pursuant to the bylaws, any proposed amendment must be presented to the entire Board at least 15 days before a vote.

Action: None at this time.

Suspicious Payment of Library Fines

Task: Consult on investigation into payment of library fines by Library employee and ensure compliance with Library Privacy Law.

Status: This matter will be removed from next month's report.

It was discovered a library employee was accessing accounts without permission and paying outstanding fines. The majority of the accounts were employee accounts, though some patron accounts may have been involved as well. The credit card being used was not recorded in the system and was apparently not in the employee's name.

The situation was suspicious enough that police investigation was warranted. Executive Director David Slivken asked if cooperation with the police was permissible under the "reasonable library operations" exception" to the user privacy provisions of the Colorado Library Law, C.R.S. §24-90-119.

The meaning of "reasonable library operations" has not been defined in case law. However, the purposes of the user privacy provisions are to

protect a patron's freedom to access, read, and watch what they choose free from oversight. The present situation does not involve revealing what library materials were accessed, but rather reviewing and accessing outstanding and overdue amounts and payments made on those accounts. It is not the use of the library that is being reviewed, but the propriety of financial transactions associated with the library.

It is legal counsel's opinion that providing and reviewing payment and financial information with police investigators will not violate the user privacy laws because it falls within the exception for operations of the library.

Action: No action is necessary at this time.

Office Space Lease for Collections Department

Task: Review and advise on lease of new office space for the Collections Department.

Status: This matter will be removed from next month's report.

A draft lease provided by the landlord, Colorado State University Research Foundation, has been reviewed. Comments and proposed changes have been submitted. A final version will be presented to the Board by staff when negotiations and terms are finalized.

Action: No action at this time unless final lease is ready.

Verizon Cell Phone Tower Lease at Old Town branch

Task: Review and advise on lease documents for placement of a cell phone tower on the Old Town Library branch roof.

Status: This matter will be removed from next month's report.

A draft lease provided by Verizon has been reviewed. Comments and proposed changes have been submitted to Verizon. A final version will be presented to the Board by J. Barnes when negotiations and terms are finalized.

Action: No action at this time unless final lease is ready.

Request for Proposals for District Master Plan

Task: Issue a request for proposals to develop a District Master Plan.

Status: This matter will be removed from next month's report.

At the September 11, 2017 meeting, the Board approved moving forward with a request for proposals to develop a District Master Plan. A committee of Trustees and library staff was formed to oversee and guide this process. The State Librarian has offered assistance with drafting the request for proposal.

Action: No action at this time unless the Committee has recommendations.

Options for Funding Future Facilities Development

Task: Summarize financing options the District can consider to fund future facilities development.

Status: The District has three options to pay for the construction of new libraries or the improvement of existing branches: (1) Cash out of reserve/budgeted funds; (2) General obligation bonds; and (3) lease/purchase financing with or without Certificates of participation. Each is summarized below. We recommend use of certificates of participation as a simple and cost effective approach.

Cash on Hand: Availability of this “pay as you go” option depends on the scale of the project, the District’s financial position, and budget considerations for not only the next year, but in years to come. It is often best to utilize cash on hand to provide current services.

General Obligation Bonds: The most common form of government financing. Bonds are secured by the full faith and credit and taxing power of the government issuer. Bonds offer low interest rates and are attractive to investors due to their double tax-exempt status. However, the issuance of debt through general obligation bonds requires an election as does the corresponding increase in taxes pursuant to Art. X, §20 of the *Colorado Constitution* (“**TABOR**”).

Lease/Purchase with or without Certificates of Participation (“COP”): Libraries are in a unique position to take advantage of sale/lease back financing. From a legal perspective, this method involves selling or leasing a property that is owned by the District. The funds received are used to buy new or improve old facilities. The property sold/leased by the District is leased back to the District which pays rent consisting of principal and interest to the investor[s]. The lease back to the District contains an option to purchase the property at the end of the lease for a nominal fee, often \$1.00. Lease/purchase financing does not constitute

long-term debt obligations of the issuing authority, and is therefore exempt from state and local laws that require voter approval under TABOR.

We recommend lease/purchase financing as the best option. However, we are ready to assist on any method the District may ultimately pursue.

Action: No action is required at this time.

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: This matter will be removed from next month's report.

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. *In Re Petition of Poudre School District R-1*, Larimer County District Court, 2016CV31129 – This case was combined with 2016CV31130.

3. *Poudre School District v. Sutherland*, Larimer County District Court, 2016CV031130 – This case was combined with 2016CV31129.

The combined cases were resolved in favor of the School District on summary judgment on May 3, 2017. Mr. Sutherland appealed the decision to the Colorado Court of Appeals (Case No. 17CA1178) on technical, procedural grounds. Specifically, Mr. Sutherland asserts the cases were improperly combined, the court lacked jurisdiction to rule, and genuine issues of material fact were present.

On February 1, 2018, The Court of Appeals ruled against Mr. Sutherland on all issues before the court. Mr. Sutherland may appeal his case to the Colorado Supreme Court, however, there is no guarantee that court would take the case.

Action: None required at this time.

Elbert County Library District Litigation

Task: On January 17, 2018, the Elbert County Library District Board of Trustees filed suit against the Elbert County Board of County Commissioners seeking declaratory and injunctive relief pertaining to a policy imposing requirements and qualifications on Library Trustees.

Status: Our firm represents the Elbert County Library District a/k/a Pines & Plains Library District. The policy adopted by the Board of County Commissioners imposes different burdens, processes, and procedures regarding the appointment, retention, and removal of Library District Trustees than those mandated by the Colorado Library Law, C.R.S. §24-90-101 *et seq.* The Colorado Library Law vests the Board of County Commissioners only with the authority to ratify or reject a candidate, not to impose criteria or set qualifications to serve. If the Board of County Commissioners is able to exercise this power, it would erode the powers granted to the Library District by the Colorado Legislature.

In the *Highplains Library District* litigation, the Colorado Court of Appeals provided a standard that applied to the removal of trustees, requiring “good cause,” but did not provide a standard for guiding the trustee appointment process.

We have prepared a Proposed Intergovernmental Agreement to govern trustee appointments and submitted it to the BOCC as a settlement proposal. They have been receptive so far.

Action: None required at this time