
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: April 4, 2018

RE: Legal Status report for April 9, 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.

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Status: 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.

Library Employed Security Officers

Task: Provide guidance regarding liability to the District in the hiring of security guards who also are also trained library staff.

Status: The Executive Director discussed the possibility of hiring library staff who would be trained security staff as well as able to assist library functions, such as working with circulation. This would reduce the District's dependence on contracted security staff, enable a security presence to be present in the Library more regularly, and allow security staff members to assist with library functioning when security may not be immediately necessary.

District staff who perform security functions would be a public employee covered by the Colorado Governmental Immunity Act, § 24-10-101 *et. seq.*, C.R.S., while carrying out their duties.

Any proposal is still being developed and this will be updated as more details are available or concerns raised requiring specific attention. Generally,

Action: None at this time. The Executive Director will continue to provide information as the development of this idea progresses.

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

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