
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: September 4, 2019

RE: Legal Status Report for September 9, 2019 Trustees' Meeting

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.

Legal counsel will provide suggestions on revisions at the September meeting.

Action: None at this time.

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.

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General Obligation Bonds: The most common form of government financing. Bonds are secured by the full faith 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. This item is being retained as placeholder for future considerations.

Conduct of Trustees and District Employees During Election Activities

Task: Provide guidance on the conduct of District Trustees and employees during election cycles.

Status: At this time, the District has no immediate plans to go to ballot to request a mill levy increase or debt authorization question. However, for the general information of Trustees and staff, please find attached a memorandum describing permissible and impermissible activity.

Action: No action is required at this time.

MEMORANDUM

TO: Poudre River Library District Trustees and Staff

FROM: Seter & Vander Wall, P.C.

DATE: September 4, 2019

RE: Fair Campaign Practices Act Compliance

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.*

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.

At this juncture, Rangeview Library District has not made a decision to refer a measure to ballot, but is investigating the possibility of doing so. Only the Board can refer a measure, but employees and Trustee’s alike should be aware of inadvertently running afoul of the Act’s requirements.

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.

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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. This includes staff working in support of a ballot initiative during paid time. 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.”

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. Elected 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., Beth Dauer, Esq., or Cameron Richards, Esq., at 303-770-2700.

SUMMARY

The following is a simple outline of things Poudre River Library District employees cannot do 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!