
MEMORANDUM

TO: Poudre River Public Library Board of Trustees

FROM: Seter & Vander Wall, P.C.

DATE: September 5, 2023

RE: Legal Status Report

This is our legal status report for the September 11, 2023 meeting of the Board of Trustees.

First Amendment to IGA with Front Range Community College

Task: Draft First Amendment to IGA with Frant Range Community College (“FRCC”) to clarify roles and responsibilities between the parties.

Status: The original IGA between the District and FRCC was entered into in February, 1996. The relationship between the District and FRCC has evolved over this time requiring an amendment to the IGA to address unforeseen operational matters, particularly with regard to technology and abolishment of late fees.

Action: None at this time, but this item will require Board approval.

Executive Director Salary Survey Information

Task: **On hold until the Fall.** Obtain a copy of the State’s Executive Director Salary survey for the budgeting process every September.

Status: This matter will remain on the report as a reminder for next Fall.

Action: None required.

Second Amendment to IGA with the City and County

Task: Consider Second Amendment to formation IGA with the City of Fort Collins and Larimer County. The Second Amendment amends the Trustee selection process to provide that the Library District will recommend

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Trustee candidates to the City and the County. The City and County will then consider the recommended candidates and determine whether to appoint. This procedure considerably streamlines the Trustee appointment process.

Status: **On hold until 2024.** Counsel was informed by the City that the City staff will make a commitment to bring this discussion to City Council in late Summer/Fall to consider a change in the process for 2024.

Action: None at this time.

Resolution in Support of Ballot Measures (Informational Item)

Task: This Fall, the City of Fort Collins will place certain ballot measures to increase sales and/or property taxes to fund a range of public services. As these tax increases may allow for future joint project(s) between the City and the District, the Board may consider the passage of a resolution in support of the ballot measures.

Status: The Fair Campaign Practices Act, Colorado Revised Statutes §§ 1-45-101, *et seq.*, permits the District Board to pass a resolution taking a position of advocacy on a particular issue/ballot measure. The District may also report the passage of or distribute such resolution through established, customary means, by which information about other proceedings of the District is regularly provided to the public. For example, a resolution may be posted on the District's website if it regularly posts other information to the public by that means. If the District regularly provides 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 may not use paid advertising to report on the passage of a resolution or to distribute a resolution.

Action: None at this time.

SB23-303 (Informational Item)

Task: Review and analyze SB23-303, a property tax relief bill with significant effects on local governments.

Status: SB23-303 was signed into law on May 24, 2023. Assuming there is voter approval as indicated below, the bill does the following:

1. Refers a ballot issue to the voters at the November 2, 2023 election asking whether property taxes should be reduced and seeking voter approval to retain

- and spend TABOR refunds to backfill a portion of certain local governments' lost property tax;
2. Establishes a local government property tax limit that is equal to inflation above the property tax revenue from the prior property tax year;
 - a. Establishes a procedure for the governing board of the local government to annually override the property tax limit;
 3. Lowers the assessment rates for residential and nonresidential property (which generates property tax savings) and creates new subclasses of property with differing assessment rates through 2032;
 4. Refines the parameters for the property tax backfill by mandating that a local government is not eligible for a backfill of lost property tax revenues if the local government has experienced an increase in real property total valuation of 20%. Library Districts are local governments eligible for a backfill, but the amount received, if any, is dependent on the increase in total valuation;
 5. Changes the deadline for certification of the mill levy to the County from December 15th until January 5th.

Options for Funding Future Facilities Development (Informational Item)

Task: Summarize financing options the District may 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; or (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 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. The District's ability to obtain funds through a sale/lease back transaction depends on the value of the assets available for sale.

In other words, in its simplest form, the District:

1. Sells a piece of property; and,
2. Utilizes the proceeds to build or improve other property; and,
3. Continues to occupy the original property under a lease with an option to repurchase.

Lease/purchase financing does not constitute long-term debt obligations of the issuing authority, and is therefore exempt from laws that require voter approval through a TABOR election. The Colorado Supreme Court has determined this is not a "debt" because the District is not required to pay the rent. It may choose to default on the rent and let the investor(s) keep the building.

We recommend lease/purchase financing as the best option. Nearly all of our library district clients have financed facilities in this manner, and it is common throughout Colorado. However, we are ready to assist with any method the District may ultimately pursue.

Compliance with Colorado Open Meetings Law (Informational Item)

Task: Please see attached memo concerning the basics of executive sessions.

MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C.

DATE: September 7, 2023

RE: Executive Session Protocols

The Colorado Open Meetings Law (“COML”) generally requires any local governmental body to discuss public business or to take formal action in meetings that are open to the public at all times. The intent of the Open Meetings Law is that citizens be given the opportunity to obtain information about and to participate in the legislative decision-making process.

Exceptions to the basic rule that meetings of a public body are open to the public are found in the rules for executive session. An executive session is a “closed” session that may only be called at a regular or special meeting. An executive session cannot be held independently of a regular or special meeting. To comply with the COML, the following protocols and rules must be followed when convening an executive session.

Protocols for Convening an Executive Session.

Prior Notice. A local public body must give the public “full and timely notice” prior to holding any meeting at which: (1) a proposed policy, position resolution, rule, regulation, or formal action is adopted, or (2) at which a majority or quorum of the body is expected to attend. “Full and timely notice” requires posting notice of the meeting at least twenty-four hours prior to the meeting, and the posting of specific agenda information *if available*. Generally, the topic of discussion, as well as any actions taken during a meeting (including the decision to convene an executive session), may deviate from the information posted in the agenda so long as the agenda was accurate at the time it was posted, and the deviation is reasonably related to the agenda information. In short, the key to proper notice is ensuring that the agenda is an accurate representation of what is known to the district, *at the time of posting*.

If the board expects to convene executive session on a particular topic, then it should be noted in the agenda information, including specific details as to the topic of the executive session. If there is a remote or purely speculative possibility that an executive session may be convened to discuss an agenda topic (i.e., it *could* happen, but nobody is expecting it), then there is no need to identify it in the agenda. If an executive session is more than a remote possibility, but is not a certainty, then it should be noted as such on the agenda, e.g., “adjourn to executive session, as necessary, for discussion of [X, Y, Z].”

Public Announcement. Prior to convening an executive session and at the public meeting, the board must announce to the public the topic to be discussed in executive session “*in as much detail as possible without compromising the purpose for which the executive session is authorized*” and must also cite to the specific COML exception that authorizes the board to meet in executive session. A board should never

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merely recite the statutory language in lieu of providing specific details about the topic of an executive session (i.e., never cite to an exception and then read straight from the statute – the executive session announcement will always require context-specific details).

COML Executive Session Citations & Specific Details Required. Pursuant to C.R.S. 24-6-402(4), executive session is allowed for specified purposes limited to:

1. (a) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest^a;
2. (b) Conferences with an attorney to obtain legal advice on specific legal questions^b;
3. (c) Confidential matters under state or federal statute, rule, or regulation;
4. (d) Specialized details of security arrangements or investigations where disclosure might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;
5. (e) Determining positions related to topics of negotiation, developing a strategy for negotiations, and instructing negotiators;
6. (f) Personnel matters^c;
7. (g) Consideration of any documents protected by mandatory nondisclosure requirements under the Colorado Open Records Act (“CORA”)^d;
8. (h) Discussion of individual students where public disclosure would adversely affect the person.

It is advised that a public entity consult with legal counsel to confirm that the proposed topic of an executive session is compliant with the COML.

Motion to Convene. After the announcement, the motion to convene the executive session must be approved by a vote of at least two-thirds of the quorum present.

Guidelines for Conducting an Executive Session.

Electronic Record. Executive sessions must be electronically recorded, and must reflect the specific citation to the section of the Open Meetings Law authorizing the Board to meet in executive session. The board may discontinue the electronic recording of an executive session only if the board’s legal counsel certifies that the discussion involves a matter of attorney-client privilege. It is advised that, upon entering executive session, the board announce the purpose of the executive session for the separate record. The record of the executive session must be retained for at least 90 days after the executive session.

Public Presence. During an executive session, only authorized individuals (members of the public body, legal counsel, necessary staff, etc.) are allowed to be present. Members of the public and the media are not allowed to attend.

^a When announcing this exception, the board must state the type of acquisition under discussion, e.g., a “purchase,” “lease,” or “sale.”

^b When announcing this exception, the board must state the topic of the legal question(s) in as much detail as possible without disclosing confidential information.

Note: The mere presence or participation of an attorney is not sufficient – the board must actually meet with the attorney, rather than discussing a legal matter amongst themselves with an attorney present.

^c When announcing this disclosure, the board must identify the employee to be discussed by name or position.

Note: Executive sessions may not be held if the employee(s) have requested an open meeting.

Note: Executive sessions may not be held to discuss board members, the appointment of board members, or to discuss policies that do not require discussion of matters personal to particular employees.

^d When announcing this disclosure, the board must cite to the specific CORA exemption requiring nondisclosure.

Privileged Topic. The executive session discussion must remain solely on the topic announced and specified in the motion to convene the executive session. The board may not engage in substantial discussion of any non-exempt topic, nor may it discuss any topic that has not been announced and voted upon in advance.

No Formal Action. The board may not adopt any proposed policy, position, resolution, rule, regulation, or formal action during the executive session.

No Rubber Stamping. The board may not reach any informal decision on a matter during an executive session that is then “rubber-stamped” during a subsequent public session.

Exiting an Executive Session. It is advised that, upon leaving executive session and entering public session, the board announce that no formal action was taken and that the executive session remained on topic.

Effect of a COML Violation.

If a public body fails to strictly comply with the COML’s requirements for convening and/ or conducting an executive session, then the executive session may be deemed an illegally closed meeting. Recording of that illegally closed meeting is public record and is open for inspection. Any actions taken in violation of the COML are subject to invalidation.

There is no requirement that a COML violation be knowing or intentional. Any citizen who is denied or threatened with denial of any rights enumerated in the COML due to a violation is entitled to an award of attorney fees upon a finding that the governmental entity has violated any of the provisions of the law. The courts may issue an injunction to enforce the COML upon application by a citizen.