
MEMORANDUM

TO: Poudre River Public Library District
FROM: Seter & Vander Wall, P.C., Kim J. Seter
DATE: March 7, 2017
RE: Legal Status Report for March 13, 2017 Trustees' Meeting

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

Swearing In of New Trustee

Task: Valerie Arnold has been nominated to fill the open Trustee position.

Status: Ms. Arnold has been nominated and her nomination ratified by the City of Fort Collins and Larimer County. Ms. Arnold will need to sign the Oath of Trustee document and be sworn in.

Action: Administer the Oath and welcome Ms. Arnold to the Board.

Annual Administrative Resolution

Task: The Annual Administrative Resolution is a way for the Board to review and acknowledge various legal requirements placed on the Board and to delegate those responsibilities.

Status: A draft Annual Administrative Resolution is attached for the Board's consideration. The Board can direct any changes it wishes to be made during the meeting.

Action: Review and adopt the annual resolution.

Review IGA between the District, City of Fort Collins, and Larimer County

Task: Review the IGA signed by the District, City of Fort Collins, and Larimer County to for purposes of determining what portions of the agreement have been accomplished and which portions still govern the relationship of the parties.

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Status: Following the Board's direction at the February meeting, we are reviewing the IGA to determine what portions of the IGA remain in effect and which portions have been accomplished or are no longer controlling over the parties. The IGA dates from the formation of the District and deals in large part with the creation of the new entity, establishing the initial relationship of the parties, and transfer of property between the City, the County and the District. Much of this has been accomplished. However, the portions concerning the ongoing relationship remain valid. A summary of the review and discussion of the relevant governing provisions will be presented at either the March or April meeting.

Action: No action required at this time.

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.

The Settlement Stipulation entered by the parties is consistent with the previous trial court order and Court of Appeals order regarding the Trustee removal process. The settlement deals primarily with the procedure for appointment of new Trustees whose terms have ended in the 3+ years this litigation has been pending. Specifically:

- 1) Provides the injunction put in place by the Court on April 29, 2014 (restraining the removal of the Board of Trustees), remains in place until the seats are filled as provided;
- 2) Clarifies the identity of all Establishing Entities (the status of the City of Evans, City of Fort Lupton and RE-8 School District had been unclear);
- 3) Creates a Nominating Committee for the appointment of Trustees to the High Plains Library District Board (currently six seats open for nomination) and establishes the voting rights of each Establishing Entity;
- 4) Clarifies that each nomination requires the ratification by all Establishing Entities of a two-thirds vote of the Establishing Entities governing body;

- 5) Reaffirmed the geographic representation for Library District Trustees as set forth in the District's bylaws;
- 6) The Nomination Committee shall create a process to determine which of the to-be-nominated trustee positions will be for two-year, three-year, and four-year terms in order to ensure, going forward, there would be no more than one or two vacancies occurring in a given year.

All claims for relief not addressed by the settlement were dismissed with prejudice, meaning they cannot be raised again by the parties.

Action: None at this time.

**CERTIFIED COPY OF ANNUAL ADMINISTRATIVE RESOLUTION OF THE
POUDRE RIVER PUBLIC LIBRARY DISTRICT
(2017)**

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

At a regular meeting of the Board of Trustees of the Poudre River Public Library District, City of Fort Collins, Larimer County, Colorado, held at 4:00 p.m., March 13, 2017, at the **Old Town Library, 201 Peterson Street, Fort Collins, Colorado**, the following Trustees were present:

Amanda Quijano
Fred Colby
Joe Wise
Linda Gabel
Becki Schultz
John Frey
Valerie Arnold

The following proceedings were had and done, to wit:

It was moved by Trustee _____ to adopt the following Resolution and ratify actions taken in connection herewith:

WHEREAS, the Poudre River Public Library District (the "District") was organized as a library district pursuant to §24-90-101 *et seq.*, C.R.S.; and

WHEREAS, the Board of Trustees of the District has a duty to perform certain obligations in order to assure the efficient operation of the District; and

WHEREAS, Colorado statutes require the Board to publish legal notices in a newspaper of general circulation in the District chosen as the newspaper for official publications; and

WHEREAS, § 24-90-109(1)(a). C.R.S. requires that a copy of the District's bylaws shall be filed with the State Library; and

WHEREAS, § 24-90-109(1)(k), C.R.S. authorizes the Board of Trustees to bond persons entrusted with library funds; and

WHEREAS, Section 24-90-109(1)(p.5), C.R.S. requires the District to maintain a current, accurate map of the legal service area and provide for it to be on file with the State Library; and

WHEREAS, § 24-90-109(2.5), C.R.S. requires the Board of Trustees to respond to a survey by the state library at the close of each calendar year; and

WHEREAS, the statutes require that the Board of Trustees meet regularly at a time and in a place to be designated by the Board; and

WHEREAS, § 24-6-402(2)(c), C.R.S., specifies the duty of the Board of Trustees to designate a public posting place within the boundaries of the District for notices of meetings, in addition to any other means of notice; and

WHEREAS, in accordance with the Colorado Governmental Immunity Act, the Board is given authority to obtain insurance against liability for injuries for which the District may be liable under the Governmental Immunity Act, pursuant to § 24-10-115, C.R.S.; and

WHEREAS, concerning the public records of the District, § 24-72-202(2), C.R.S. defines “Official Custodian” to mean and include any officer or employee of any political subdivision of the state who is responsible for the maintenance, care, and keeping of public records, regardless of whether the records are in his or her actual personal custody and control; and

WHEREAS, the Local Government Budget Law of Colorado, §§ 29-1-101, *et seq.*, C.R.S., requires the Board to hold a public hearing on proposed budgets and amendments thereto, to adopt budgets, and to file copies of the budgets and amendments thereto; and

WHEREAS, the Board of Trustees desires to appoint a finance officer for the District to assist with providing financial services and to assist with the financial operations of the District, and who shall also be designated as the budget officer required to prepare and submit to the Board a proposed District budget by October 15, pursuant to §§ 29-1-104 and 29-1-105(3)(d), C.R.S.; and

WHEREAS, if required under § 29-1-603, C.R.S., the governing body of the District shall cause to be made an annual audit of the financial statements for each fiscal year; and

WHEREAS, pursuant to the Intergovernmental Agreement among the District, City of Fort Collins, and Larimer County dated December 18, 2007, the District is required to file an annual report with the City and the County by March 31 of each year; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE POUDE RIVER PUBLIC LIBRARY DISTRICT THAT:

1. The Board designates *The Fort Collins Coloradoan* as the official newspaper of general circulation within the boundaries of the District, or in the vicinity of the District if none is circulated within the District, and directs that all legal notices shall be published in accordance with applicable law therein.

2. The Board directs the Executive Director to file a copy of the District's bylaws with the State Library.

3. The Board directs the Executive Director to obtain bonding for the persons entrusted with the Library funds.

4. The Board directs the Executive Director to maintain a current, accurate map and file it with the State Library.

5. The Board directs the Executive Director to complete the annual questionnaire submitted by the State Library at the end of each year.

6. The Board will hold its regular meetings on the second Monday of every month at 4:00 p.m. at various library locations within the District.

7. Regular and Special Meeting notices shall be posted at: (1) the Office of the Clerk & Recorder of Larimer County; and (2) the Community Bulletin Boards at the Old Town Library at 201 Peterson Street; the Council Tree Library at 2733 Council Tree Avenue; and the Harmony Library at 4616 South Shields, Fort Collins, Colorado.

8. The following Trustees will serve as officers:

- _____ -President
- _____ - Vice President
- _____ - Secretary/Treasurer

9. The Board directs the Executive Director to obtain quotes and maintain insurance for the District, to insure the Trustees acting within the scope of employment by the Board against all or any part of liability for an injury; to insure against the expense of defending a claim for injury against the District, its staff or its Board. The Board will annually review all insurance policies in effect.

10. The Board designates the Executive Director to serve as the official custodian of public records for the District, who shall coordinate with legal counsel to the extent they maintain any public records.

11. The Board designates Jeff Barnes, District accountant, as the District's finance officer. The Board designates the Finance Officer to serve as the budget officer, and to submit a proposed budget to the Board by October 15, and, in cooperation with legal counsel, to schedule a public hearing on the proposed budget; to prepare a final budget, budget resolutions and amendments to the budget, if necessary; to certify the mill levy on or before December 15; and to file the approved budgets and amendments thereto with the proper governmental agencies in accordance with the Local Government Budget Law of Colorado.

12. The Board of Trustees appoints the law firm of Seter & Vander Wall, P.C. as legal counsel for the District.

13. The Board directs the District accountant to prepare or cause to be prepared for filing with the State Auditor, if required, an audit of the financial statements by June 30. Further, the Board directs that the audit be filed with the State Auditor by July 31.

14. The Board directs the Executive Director to, no later than March 31 of each year, complete the annual report as required by the Intergovernmental Agreement with the City of Fort Collins and Larimer County which report shall include: the current state of the library system; goals and projections for the coming year; a summary of the current adopted budget; status of reserve accounts and accounts; and such other statistics and information as the Board deems to be of the public interest.

Whereupon, the motion was seconded by Trustee _____, and upon vote, unanimously carried. The Chair declared the motion carried and so ordered.

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**CERTIFIED COPY OF ANNUAL ADMINISTRATIVE RESOLUTION OF THE
POUDRE RIVER PUBLIC LIBRARY DISTRICT (2017)**

SIGNATURE PAGE

ADOPTED AND APPROVED THE 13TH DAY OF MARCH 2017.

Poudre River Public Library District

By: _____
President

ATTEST:

By: _____
Secretary

DRAFT

CERTIFICATION

I, _____, Secretary of the Board of Trustees of the Poudre River Public Library District, do hereby certify that the attached and foregoing Resolution is a true copy from the records of the proceedings of the Board of said District, on file with Seter & Vander Wall, P.C., legal counsel to the District.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District, Larimer County, Colorado, this 13th day of March, 2017.

Secretary

[SEAL]

DRAFT