
MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C., Kim J. Seter

DATE: May 3, 2017

RE: Legal Status Report for May 8, 2017 Trustees' Meeting

This is our legal status report for the Trustees' meeting scheduled for April 10, 2017.

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 for purposes of determining what portions of the agreement have been accomplished and which portions still govern the relationship of the parties.

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 April or May meeting.

Action: No action 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 are working with the committee of Ms. Quijano, Mr. Frey, and Ms. Schultz to make appropriate and necessary revisions.

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As discussed in last month's report, the bylaws are generally in good shape, though there are areas which could be cleaned up for clarity, consistency with policy, and corrections to grammar. Because these changes will affect numerous provisions throughout the document, the recommended procedure is to present a fully revised copy of the bylaws to the Board which can then be voted on as amended and restated bylaws.

A draft document will be presented to the committee shortly. Pursuant to the bylaws, any proposed amendment must be presented to the entire Board at least 15 days before a vote. The tentative plan is to have this project completed for action at the June meeting.

Action: None at this time.

Public Speaker Limitations

Task: Several Trustees have asked whether a Trustee can offer his/her 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 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.