
MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C., Kim J. Seter, Esq., and Cameron J. Richards, Esq.

DATE: August 10, 2017

RE: Legal Status Report for August 14, 2017 Trustees' Meeting

This is our legal status report for the Trustees' meeting scheduled for August 14, 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.

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.

Options for Funding Facilities Plan

Task: Summarize financing options the District can consider to fund the facilities development plan.

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 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 with reviewing and recommending action on any method the District may ultimately pursue.

Action: No action is required at this time.

Organization of Mulberry Frontage Metropolitan District

Task: Our office received notice of a public hearing on the service plan for the proposed Mulberry Frontage Metropolitan District.

Status: The public hearing will be held on Monday, August 14, 2017, at 3:00 p.m. at 200 W. Oak Street, Fort Collins, CO 80521.

As a taxing entity with boundaries that either overlap or are within three miles of the proposed district, you are entitled to notice of the formation of the proposed district. C.R.S. § 32-1-204(1). The formation of this district would not appear to impact the Library District. If the proposed district is within your boundaries, you may see your tax base grow as a result. If the proposed district is near a branch, that branch may see increased traffic as buildout progresses.

Action: No action is required at this time.

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. *In Re Petition of Poudre School District R-1*, Larimer County District Court, 2016CV31129 – This case was combined with 2016CV31130.

3. *Poudre School District v. Sutherland*, Larimer County District Court, 2016CV031130 – This case was combined with 2016CV31129.

The combined cases were resolved in favor of the School District on summary judgment on May 3, 2017. Mr. Sutherland has appealed the decision to the Colorado Court of Appeals (Case No. 17CA1178) on technical, procedural grounds. Specifically, Mr. Sutherland asserts the cases were improperly combined, the court lacked jurisdiction to rule, and genuine issues of material fact were present.

We will monitor the appeal for any issues that may impact the District. If issues that could potentially impact the District as a public taxing entity are raised, the District may consider filing an *amicus* (friend of the court) brief to help guide the court in its decision making process. If the issues remain purely procedural, an *amicus* brief would not be warranted.

Action: None required at this time.