
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: November 8, 2017

RE: Legal Status report for November 13, 2017, Trustees' Meeting

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

Election of Officers

Task: Board President Gable has resigned. The Board may choose to elect a new president.

Status: Section 25 of the Board's Bylaws states that "in the absence of the president, the vice president shall have the powers and perform the duties of the president." Accordingly, Ms. Quijano will serve as President at the November meeting.

Section 22 of the Bylaws states that "any vacancy ... shall be filled by a Trustee elected by vote at a ... meeting ... for the remaining portion of the term of such office."

Action: The Board should entertain a motion elect a Trustee to serve as president until the annual meeting at which time all officers are up for election.

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.

The bylaws are generally in good shape, though there are areas which could be cleaned up for clarity, consistency with policy, and corrections to

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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 copy will be provided to the Committee for review and comment prior to presentment to the Board.

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.

Request for Proposals for District Master Plan

Task: Issue a request for proposals to develop a District Master Plan.

Status: At the September 11, 2017 meeting, the Board approved moving forward with a request for proposals to develop a District Master Plan. A committee of Trustees and library staff will be formed to oversee and guide this process. The State Librarian has offered assistance with drafting the request for proposal.

The committee met on October 18, 2017, to commence the process.

Action: No action at this time unless the Committee has recommendations.

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.

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 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.

Effect of Library Privacy Law and Policy During Police Investigation

Task: Provide additional information related to the “reasonable operation of the library” exception to § 24-90-119 C.R.S., the Library Privacy Law.

Status: Attached to this memorandum is *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (Colo. 2002). This case analyzes the protections afforded to members of the public in the purchase of books from private party sellers under the First Amendment to the United States Constitution and Article 2, Section 10 of the Colorado Constitution. While not a library case, the analysis addresses the broad protections to the right to receive and distribute information and ideas anonymously and without government interference. Additionally, a copy of the ALA interpretation of library privacy statutes is attached for consideration.

A copy of the memorandum provided at the October meeting is reattached for informational purposes.

Pursuant to the board’s request, we are surveying other library districts to determine the approach taken to these issues and will provide further information as soon as it is available.

Action: None required at this time. Legal counsel is available for further questions.

Verizon Rooftop Antennae Lease

- Task:** Review proposed rooftop lease with Verizon for a communications antennae.
- Status:** The proposed lease has been reviewed and returned to Jeff Barnes for further consideration. Jeff will present this to the Board when deemed appropriate.
- This matter will be removed from next month's status report.
- Action:** None at this time.

Intergovernmental Agreement Regarding TIF Financing Matters

- Task:** Review and comment on proposed draft Intergovernmental Agreement TIF Project Review proposed for execution by the library district, county, municipalities and districts.
- Status:** We are working on this review now. An explanation of the draft, its purpose and our comments will be provided in next month's report.
- Action:** None required until staff requests action.

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.

The Court of Appeals case has been briefed and is before the Court for determination. Briefing has focused exclusively on the procedural and technical issues which, regardless of outcome, would not impact the District as a public taxing entity. We will monitor the appeal and any judgment for any issues that may impact the District.

Action: None required at this time.