
MEMORANDUM

TO: Poudre River Public Library District

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

DATE: January 4, 2017

RE: Legal Status Report for January 9, 2017 Trustees' Meeting

This is our legal status report for the Trustees' meeting scheduled for January 9, 2017.

2016 Election Question[s]

Task: The Board approved a Resolution calling for participation in the 2016 election to address the potential TABOR refund. Formulation of the final question was postponed until the City of Fort Collins determines its approach to this matter at a meeting planned for the 6th of September.

Status: The canvass board results were certified to the Colorado Division of Local Governments on December 7, 2016. This filing and the passage of 30 days from the election bars almost all claims and objections that can be made concerning the election.

Action: None required at this time.

Election Law Compliance

Task: Inform staff and the Board of election law limitations that apply to the 2016 Ballot Question per the request of Interim Director Draves.

Status: Mr. Sutherland had made various threats concerning the conduct of the election. Challenges and suits are now barred.

Action: No Board action required.

Public Speaker Limitations

Task: Several Trustees have asked whether the Board can, and how best to, place limitations on speakers during the Public Comment section of meetings to avoid inappropriate comments and *ad homonym* attacks on the Board and

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individuals.

Status: A government entity's efforts to bar speakers or limit the content of speech are limited by the *1st Amendment to the United States Constitution*. Providing a public comment period in public meetings creates a "*designated public forum*." A "*designated public forum*" is the most highly protected forum for speech.

Most of the speech that has been of concern was raised in a political context concerning taxes, elections and URA related issues. "*Political Speech*" is the most highly protected speech under the *1st Amendment*.

In short, we are dealing with the most highly protected speech in the most highly protected forum.

Limiting content and/or barring a speaker's political speech in a designated public forum can only be accomplished if the speaker is disruptive to the extent that he/she is preventing the Board from accomplishing its work.

Action: If it is the Board's desire, we can revisit the Public Comment Policy to add guidelines concerning acceptable behavior, but, there is little we can do to preclude *ad homonym* attacks on public officials and consultants.

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. Many actions have been closed, but the following are still pending:

1. *Sutherland v. Poudre School District*, Larimer County District Court, 2016CV000299;

2. *Poudre School District v. Sutherland*, Larimer County District Court, 2016CV031130;

3. *In Re Petition of Poudre School District R-1*, Larimer County District Court, 2016CV31129.

It is interesting that Mr. Sutherland brought actions against all of the parties that that promoted tax questions (county, city and two school districts), except the Library District.

In sum, the currently pending actions are efforts to obtain a court order that the 2016 elections approving taxes and debt for the Poudre School District R-1 are valid and final. This will remove any cloud on the ability of the school district to issue bonds for new schools. The actions have not progressed very far at this time.

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.

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.

The City of Greeley has intervened and several new issues are being raised. This case appears to be making no progress at this time.

Action: None at this time.