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Nuts & Bolts (and Bricks!)

Library Elections Primer for Operating and Building
Projects
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SO YOU WANT TO BUILD A LIBRARY...

- Or buy books, improve your facilities or pay the people who work there!
- Asking your constituents for money is hard work
- Overcoming public perceptions of libraries
- Libraries have never been busier
- Increased demand for services and diversified programming

...AND YOU NEED SOME MONEY TO DO IT!

- How much can you afford?
- Ideally, net revenues (revenues minus operating expenses) should be 150-200% *over* your expenses on an annual basis
- General rule of thumb – if the tax impact will exceed \$2/month per \$100K of *actual value* of someone's home (so, \$24/year on \$100K of actual value), it will be a tough sell (but not impossible)

TO GET MORE MONEY, YOU NEED TO HAVE AN ELECTION

- TABOR (a/k/a Taxpayers Bill of Rights) is a constitutional amendment that requires voter approval for any tax increase or the incurrence of any debt
- Dates for TABOR elections
 - Municipal libraries: any November or the date of the municipality's local election
 - County libraries: any November
 - Library Districts: any November
 - Library Capital Facilities Districts: any November
 - Regional Library Authorities: any November
 - School Libraries: any November

WHAT KIND OF ELECTION DO YOU NEED TO HAVE?

- Generally speaking, any election to impose (or raise) taxes or incur debt must be done by mail ballot
- Determine whether you're going to conduct an independent mail ballot election, or coordinate with the county
 - Things to consider when making this determination
- Type of library determines which election code you follow
 - Municipal libraries: Colorado Municipal Election Code - Title 31, Article 10 of the Colorado Revised Statutes (CRS) (unless the municipality has opted into the Colorado Election Code)
 - Everyone else: Colorado Election Code – Title 1, Articles 1-13.5, CRS

IMPORTANT ELECTION DATES

- Election resolution could be adopted in June or July
- July 29 is the deadline to notify the County Clerk in writing that the library will participate in a coordinated November 8, 2016 election
- September 9 is the deadline to notify the County Clerk of the ballot content and the order of the ballot (regardless of whether it's a coordinated or an independent mail ballot election) – your election resolution (including the ballot language) must be adopted by now!
- Other important deadlines apply – both TABOR deadlines and deadlines in the applicable election code

PLANNING FOR THE FUTURE

- What do you need?
- Urgency
- Long-term planning
- Delaying the inevitable
(more costly to wait)



WILL THE COMMUNITY SUPPORT YOUR PROJECT?

- Board/Council support
- Doing your homework
- Polling
- Community outreach
- Communicating the needs



HOW WILL YOU PAY FOR YOUR PROJECT?

- Existing net revenue (cash)
- Property tax vote
- Sales tax vote (not an available option for everyone)
- Bond
- Certificate of Participation (COP)

HOW MUCH CAN YOU AFFORD?

- Look at current revenue/expenses.
- Be conservative about future revenue/expense projections.
- Don't forget to include future debt repayment (and assume a higher interest rate than today, especially if you need an election).
- Factor in a long-term capital plan for operation/maintenance.
- We can help you develop a project affordability/debt capacity analysis.

FAIR CAMPAIGN PRACTICES ACT

- Now that the election ordinance or resolution has been adopted, the provisions of the FCPA kick in
- The FCPA is a state law that restricts the use of **PUBLIC** money in most campaigns
 - Restricts a **public entity's** ability to spend public money
 - Restricts the ability of **elected officials** and **employees of the public entity** to spend public money
- Found at 1-45-117, C.R.S. and in Article XXVIII of the Colorado Constitution (“Amendment 28”)

FCPA – RESTRICTIONS ON PUBLIC ENTITIES

- A library may not expend public moneys from any source, or make contributions, to urge electors to vote in favor of or against certain ballot issues or measures
- A library can expend public moneys to distribute a factual summary, but the summary must include arguments both for and against the proposal. The summary must not contain a conclusion in favor of or against the proposal (ie, must not urge a vote one way or another)
- A library can adopt a resolution supporting or opposing issues of official concern
 - News of resolution can be disseminated through regular, established means (other than paid advertising)

FCPA – To URGE OR NOT TO URGE

- FCPA prohibits a library from expending public funds to urge voters to vote *for or against*
 - Some early decisions suggested it may be possible to expend public funds in non-advocacy manner
 - “Urge” now defined by Court of Appeals:
 - Present, advocate or demand earnestly or pressingly
 - Taking a position favorable or opposed to
 - Conveying the message that the measure should be approved

FCPA – PERMITTED ACTIVITIES OF ELECTED OFFICIALS AND EMPLOYEES

- Permitted activities by library employees and board members:
 - Library employees and board members can respond to unsolicited questions about issues of official concern
 - Library employees with policy-making responsibilities and board members can spend no more than \$50 of public moneys in the form of letters, telephone calls, or other activities incidental to expressing opinion on issues of official concern
 - Board members may express a personal opinion on any issue
 - Library employees and board members may expend personal funds, make contributions, or use personal time to urge electors to vote one way or another on an issue of official concern

FCPA – ENFORCEMENT

- Enforcement Provisions
 - 180 days from date of violation to file written complaint with Secretary of State
 - Secretary of State refers complaint to Administrative Law Judge
 - <http://www.sos.state.co.us/pubs/elections/CampaignFinance/complaints.html>
 - Civil penalty of at least double and up to five times the amount contributed
 - In a recent case, an ALJ fined a county commissioner personally for a violation of the FCPA
 - Any appropriate order, sanction or relief

FCPA – How To ANALYZE A SITUATION

- Essential elements of a case involving ballot measures:
 - Is it a political subdivision?
 - Was it a covered election?
 - Did the FCPA provisions apply yet?
 - Was there an expenditure of public money?
 - Were voters urged to support or oppose a measure?

FCPA Do's AND DON'TS

- Don't call a bond election, and then use public money to pay for fliers supporting the bond issue
- Don't post information on the library website advocating for the passage of a bond issue
- It's okay for a library district board member to publish a newsletter discussing a local ballot issue if she does so with her personal funds
- Make sure your factual summary is balanced and even-handed and that you have about the same amount of both pro and con material; a factual summary may not express any opinion
- If you're an elected official, don't spend any amount of public money (even \$2.35!) on a letter supporting a candidate
- Don't try to aggregate your \$50 exception; you can't pool your own exception with 4 other board members to spend \$250 of public moneys on a ballot issue or measure
- DO call your attorney if you have questions!

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