

---

**2014**

**Special District Association  
Annual Conference**

**Library District Forum**

**Discussion Leaders:**

**Kari May**

Director, Elbert County Library District  
President, Colorado Association of Libraries

**Kim Seter, Esq.**

**Elizabeth Dauer, Esq.**

September 10, 2014

Topics of Interest

**I.**

**Library District Boundaries/Service Areas**

- What are library district boundaries or “service areas?”
- Do they matter?
- Creation, Inclusion and exclusion
- Exclusion of property after *High Plains v. Johnstown*

**II.**

**Trustee Appointment and Removal Processes**

- A Process Unique to Libraries
- Development Concerns
- Reading the Statute for All It’s Worth

{00123837 2}

- Eliminating Misunderstanding by IGA
- Limiting Misunderstanding in Trustee Bylaws
- Trustee Removal: The Importance of Defining “Cause”

### III.

## Forum’s Choice

### I. What are library district boundaries or “Legal Service Areas?”

The Library Law has a definition of “Legal service area” found at C.R.S. 24-90-103(4.5).

§ 24-90-103. Definitions.

*"Legal service area" means the geographic area for which a public library has been established to offer services and from which, or on behalf of which, the library derives income. A "legal service area" shall be defined in terms of geographic units for which official population estimates can be obtained or derived annually from the Colorado state data center. Legal service area population estimates shall be collected and reported according to guidelines developed by the state library. "Legal service area" includes any areas served under contract for which the library is the primary provider of library services and for which the library receives funds to serve. [emphasis added]*

A. Do “Legal Service Areas” matter to a District that serves everyone no matter where they come from?

1. A library district is a government entity with coercive governmental powers. Let’s discuss the differences between

#### Service Model and Governmental Model

and how they are affected by **Political Boundaries** with regard to (a) funding, (b) elections, (c) governance, etc.

NOTE: This dual definition creates ambiguity that could result in violations of constitutional principles.

2. Note the inconsistency in the definition of “Legal Service Area” that arises when applied to a district. Can a government exercise its jurisdictional powers outside its boundaries? Let’s discuss the effect of the “universal

service model” encouraged by the Colorado Library Card and whether a district can and should limit or preclude access by non-citizens.

B. Changes in “Legal Service Area” as a Political Boundary.

1. Finalizing boundaries at the time of district formation (*C.R.S. § 24-90-106*).

*City of Westminster v. Jefferson County*

*Town of Wellington v. Fort Collins Regional Library District*

2. Inclusion of a “Government Unit” into a Library District: *C.R.S. § 24-90-106.3*.

NOTE: The inclusion statute has no provision to include less than an entire “governmental unit” into a library district. How does this affect discussions a district’s current boundary? What incentive is there to include under a “universal service model?”

3. Exclusions of property from a library district’s Political Boundaries.

- a. History of the intergovernmental agreements and annexation issues that raised concerns.

- i. Annexation IGA’s (Aurora and Johnstown)

- ii. Treasurer/Assessor Misunderstandings (Adams and Arapahoe)

- iii. Subsequent annexations to a “Legal Service Area” adjacent to a library district Political Boundary. (Wellington)

- b. Boundary changes after *High Plains v. Johnstown*. The legal interpretation of *C.R.S. § 24-90-106.5*:

*If a municipality is in the legal service area of an existing ... library district, public library service shall not be refused or discontinued other than as provided in this article. The municipality may establish its own municipal library only by choosing to do so by means of financial support that does not affect the financial support previously established for the ... library district; except that the municipality and the ... library district may, by mutual written agreement, permit a financing method for a*

*municipal library that does affect the financial support previously established for the ... library district.*

i. The statute says nothing about removing property from the library district's Political Boundary. However, the courts have not added that gloss to the language.

ii. Let's discuss:

Why would you ever enter into an agreement to reduce the size of your Political Boundary?

Is doing so fair to your existing tax payers in light of the "universal service model?"

## II. Trustee Appointments and Removal

A. Trustee appointment is governed by statute: C.R.S. § 24-90-108(2)(c).

*In a library district established by only one governmental unit, the legislative body of the governmental unit shall decide the number of its members to be appointed to the committee formed to appoint the initial board of trustees .... In a library district established by more than one governmental unit, the legislative body of each ...governmental unit shall appoint two of its members to a committee that shall appoint the initial board of trustees.*

\* \* \*

*Thereafter, any such legislative body or bodies may either continue such a committee or delegate to the board of trustees of the library district the authority to recommend new trustees.*

\* \* \*

*Trustee appointments shall be ratified by ... the legislative body;*

\* \* \*

*...the failure...to [ratify] within sixty days upon a recommendation shall be considered a ratification of such appointment.*

1. Let's discuss the substantial and substantive ambiguities in this statute. Can you tell who appoints trustees after the initial board is appointed?
2. The current political climate is affecting library trustee appointments. The appointments may not always be in the best interests of the library. Let's discuss three situations in which the process is currently having an impact.

B. Trustee removal is governed by statute: C.R.S. § 24-90-108(5).

*A library trustee may be removed only by a majority vote of the appointing legislative body or bodies, but only upon a showing of good cause as defined in, but not limited to, the bylaws adopted by the board.*

1. Let's discuss the substantial and substantive ambiguities in this statute. Who decides cause for removal of a trustee? Is there any standard to be considered if the trustees have not provided anything in their bylaws?
2. The current political climate is affecting library trustee removals. Let's talk about the status and potential impact of *Kirkmeyer et al. v. High Plains Library District*.

C. Library districts need to prepare now to avoid or win the battles ahead.

1. It is very important that you determine now whether your governmental unit has "*continued the committee that appointed the initial trustees*" or "*delegated to the board of trustees.*"
  - i. For legal purposes this is a question of fact and not a question to ask your governmental unit.
  - ii. Once this matter is resolved by the library (acting alone) it is time to make a record and act in accordance with the determination. What should you do in this regard?
  - iii. Acknowledge the process being followed and document it in detail in the Trustee's bylaws.
2. Include a definition of "Cause" for removal in all district bylaws.

- i. Let's discuss the definitions you currently have and what may be appropriate of inappropriate.
  - ii. Do we have an opportunity to narrow the scope of the phrase "*but not limited to*" contained in the removal statute by defining what "*cause*" is not?
    - a. Maybe we can exclude political activities, book selection, library branch budgeting issues, etc.
    - b. Maybe we can say that "good cause" exists only when the board of trustees proposes removal for a stated reason.
3. Under appropriate circumstances an Intergovernmental Agreement might finalize the process of appointment and removal. Any IGA must fit within the statutory framework (*as the libraries interpret it*). If an IGA is appropriate, it should address:
- i. How it complies with the statutory framework in C.R.S. § 24-90-108, C.R.S.;
  - ii. Whether appointments are by committee or if power has been delegated to the trustees;
  - iii. A procedure to solicit candidates if desired and the information the trustees and/or governmental units desire for evaluation of the candidates;
  - iv. Who will receive and cull the applicants (this is important whether you receive 100 applications or have to beg people to serve);
  - v. Provide for appointment by the board of Trustees, subject to ratification by the governmental units;
  - vi. State that upon refusal to ratify, the Board of Trustees must appoint a new trustee subject to ratification by the governmental units;
  - vii. Identify the definition of good cause for removal; and,
    - a. Whether removal is at the initiative of the trustees or can be at the initiative of the governmental units;

- b. Provide that upon removal, the Board of Trustees begins the process of appointment to fill the vacancy.

**CAVEAT:** All of the issues and recommendations we have discussed and developed today are preliminary because the law is changing as a result of the changes in the political climate and recent litigation. It is going to be very important that we all work toward the same goal and in the same way. The Colorado Association of Libraries' leadership in this regard is going to be very important.

**PLEASE**  
**DO NOT ACT UNILATERALLY ON ANY OF THE DISCUSSIONS OR  
RECOMMENDATIONS THAT COME OUT OF THIS FORM. CONTACT KARI,  
ELIZABETH OR KIM PRIOR TO ACTION TO INSURE THAT WE ARE NOT  
ACCIDENTALLY WORKING AGAINST ONE ANOTHER.**