

MINUTES
LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT
BOARD OF TRUSTEES' MEETING
LAS VEGAS, NEVADA
April 16, 2009
(approved May 21, 2009)

The Board of Trustees of the Las Vegas-Clark County Library District met in regular session in the Las Vegas Library, Las Vegas, Nevada, at 6:00 p.m., Thursday, April 16, 2009.

Present:

Board:	F. Barron, Chair	
	V. Davis-Hoggard	A. Arthurholtz
	A. Aguirre	K. Benavidez
	R. Kirsh	K. Crear
	L. Carrasco	M. Saunders

Counsel: G. Welt

Absent:

Staff: Daniel L. Walters, Executive Director
Numerous Staff

Guests: Michael Priseler, Wells Fargo Insurance Services of Nevada, Inc.

F. Barron, Chair, called the meeting to order at 6:06 p.m.

Roll Call (Item I.) All members listed above represent a quorum.

Agenda (Item II.) Chair Barron said that there would be no need for an Executive Session (Item III.) and would remove it from the Agenda. Trustee Aguirre moved to approve the Agenda as changed.
There was no opposition and the motion carried.

Executive Session (Item III.) Removed.

Approval of Proposed Minutes of the Special Meeting, February 26 and 28, 2009 and Proposed Minutes Regular Session, March 12, 2009. (Item IV.A-B.)

Trustee Benavidez moved to approve the Minutes of the Special Meeting held February 26 and 28, 2009. There was no opposition and the motion carried.

Trustee Davis-Hoggard moved to approve the Minutes of the Board of Trustees Meeting held March 12, 2009. There was no opposition and the motion carried.

Chair's Report (Item V.)

Chair Barron welcomed the District's newest Trustees, Liz Carrasco and Michael Saunders. She asked them to briefly introduce themselves.

Trustee Carrasco said she had been a Clark County resident for 25 years and a fan of area libraries since she arrived. Now her five-year-old son is also a fan. She has worked in both the non-profit and government fields. Carrasco said she is thrilled to join the Trustees and is looking forward to working with and getting to know the Trustees and staff.

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Trustee Saunders said he has been an area resident since the middle of the 1970s. He attended UNLV as an undergraduate majoring in both journalism and philosophy. During his time at UNLV, Saunders interned at the District, working in the Public Relations Department as well as a Page and in Circulation. He said he wholeheartedly supported the District's mission of providing information to area citizens and said it was a tremendous pleasure and honor to serve as a Trustee.

Chair Barron thanked the new Trustees and said that Executive Director Walters would be meeting with them soon for an individual orientation to the District. She encouraged them to also contact her and other Trustees if they had any questions.

Chair Barron then acknowledged the service of Trustees Ken Carter and Elaine Sanchez as their terms have expired. Both have served two full terms. Barron also noted that the meeting would be the last for Trustee Arthurholtz as the expiration of her second and last full term would be very soon. Barron thanked Arthurholtz for her dedicated service.

Chair Barron noted that she was re-appointed for her second and last full term at the last Las Vegas City Council meeting.

Chair Barron and Trustees then discussed rescheduling the July 9 Board meeting as the date conflicts with the start of the ALA Annual Meeting. After discussion, Trustees agreed to reschedule the meeting to Tuesday, July 7, 2009. The Executive Assistant will advise Trustees of the meeting's location.

Executive Director's Report (Item VI.A.)

Executive Director Walters discussed his activities over the last month. Mr. Walters was invited to speak at a national Public Library Directors seminar hosted by the District's vendor, Innovative Interfaces, Inc., who supplies and maintains the District's cataloguing inventory checkout systems. Walters was part of a panel discussing funding major capital automation infrastructure improvements.

Mr. Walters also made two trips to Carson City. The first trip was to testify against AB507, a bill to remove the Department of Cultural Affairs from a cabinet position within the Governor's office to the Secretary of State's oversight, proposed by the Secretary of State without any advance warning. The Cultural Affairs Department includes the Nevada State Library as well as the state museums and arts programs, and controls the distribution of federal funds to Nevada libraries. Walters said that the issue had not been given a substantial amount of planning, especially in how to deal with the federal funds that pass to the public library community. He noted the Secretary of State in only a half dozen states has responsibility for state library funds.

While Mr. Walters was on his second trip to Carson City attending Library Legislative Day, he received word that the bill had died. Walters attended Library Legislative Day in Carson City along with Trustee Davis-Hoggard and representatives from libraries around Nevada.

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Mr. Walters said that staff will bring an updated *Technology Plan* to the Board next month for adoption. The updates are required as the current *Plan* will expire in several months and an updated *Plan* is required for the District to receive federal funds.

Trustee Aguirre asked about the gas leak at the Mt. Charleston Library mentioned in the General Services Report. General Services Director Steve Rice explained that the facility is heated using propane. Water had accumulated in the gas line which froze and then burst. The problem was identified early and has been corrected.

Trustee Davis-Hoggard commented that she also had serious concerns about AB507 in that it would dilute Trustee's authority. Even though the bill died, she said that staff should watch to see that the bill does not come up in another format.

Mr. Walters asked that the General Services report be discussed due to staff's recommendation about handling the District's liability insurance.

Trustee Benavidez moved to accept Reports V.A. 1-4, 6-7. There was no opposition and the reports were accepted.

**Public Services and
Security Report
(Item VI.A.1.)**

Approved.

**Business Office
Report
(Item VI.A.2.)**

Approved.

**Human Resources
Report
(Item VI.A.3.)**

Approved.

**Technology Report
(Item VI.A.4.)**

Approved.

**General Services
Report
(Item VI.A.5.)**

Mr. Rice advised Trustees of a proposal by the District's broker for property and casualty insurance.

Mr. Rice advised Trustees that the District's property and casualty insurance is scheduled for renewal on July 15, 2009. For nearly a decade, Chubb Insurance Companies provided the District's property and casualty coverage after a process in which the District's broker aggressively marketed the insurance. Due to the continuing relationship with Chubb, fewer and fewer companies bid for the coverage. Last year, Travelers Insurance Company, who presented superior terms and conditions saving the District considerable money (\$47,608) while providing broader coverage, was awarded the contract. The premium cost for the District is \$250,000. However, many insurance companies declined to quote terms and conditions last year citing Chubb's historically low price for their coverage. There were only two bids received, from Chubb and Travelers.

Mr. Rice continued to say that Charlie Dorsey, Senior Vice President for Wells Fargo Insurance Services of Nevada, Inc., the District's Broker of Record for property and casualty insurance, was concerned that if they proceed as usual and conduct an aggressive marketing effort this year that it will have a potentially negative impact on the District's insurance program.

Mr. Dorsey proposed that he approach Travelers and request a reduction in rates in exchange for a guarantee of renewing their program. He believed that the approach would be beneficial to both the District and Travelers and would also serve to strengthen the partnership between the two entities. Mr. Rice asked for direction on the proposal from the Trustees.

Chair Barron and Trustees Aguirre, Davis-Hoggard and Kirsh asked if the proposal would require an extension to the current policy, whether the proposal covered not only property and casualty insurance but also public officials and workers compensation coverage, the cost to the District by not going through the bid process, whether not going through the bid process would set a precedent and what are the District's options if Travelers chose to increase its rates.

Mr. Rice explained that the proposal covered all of the District's property and casualty insurance as well as the public officials' coverage, but the workers compensation insurance coverage was through a different company and not subject to the proposal. Mr. Walters said the workers compensation coverage was on its last renewal with one year to go.

Mr. Rice and Mr. Walters explained that the District incurred no expenses for the bid process as the broker pays for that and is reimbursed with the commission paid by the winning bidder. There is an administrative cost for staff time which does add up as the bid process is a lengthy one. Rice noted that insurance coverage is actually exempt from bid requirements but it had been the District's practice to seek insurance proposals annually. Walters said that he had known no other instance in his tenure at the District where its Broker advised that no bidding process be used but in the current economic situation, it may be more to the District's interest to negotiate with the current insurer than go out to bid.

Mr. Rice introduced Michael Priseler, Marketing Manager for Wells Fargo Insurance Services of Nevada who discussed the danger to the District of continuing to shop the policy. He said Wells Fargo staff felt that continuing to market the policy might give the District a reputation as a customer more interested in price than the relationship. The result would be an increase in premium costs as the insurers who chose to bid would bid the amount they think they need to make the bid profitable, not thinking of a multi-year relationship.

Mr. Priseler reiterated to Trustees that Wells Fargo hopes to be able to negotiate level pricing or a slight reduction in the current premium. He spoke about the process Wells Fargo goes through when soliciting bids, noting that the company likes to approach at least five insurers. He

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added that in the last several years, fewer insurers have bid and reminded Trustees that only two bids were received last year.

After discussion, Trustees asked that Wells Fargo Insurance Services attempt to negotiate a reduction or level pricing on the premium with Travelers. Mr. Rice was directed to report back to Trustees at the May meeting. If Trustees were satisfied with the results, the renewal would be presented to the Board at the June meeting. If Trustees did not agree with the results of the negotiation with Travelers, there would be time to go out to bid and receive proposals in time for a decision at the July Board meeting to meet the current policy's July 15 expiration.

Trustee Davis-Hoggard moved to accept the General Services Report. There was no opposition and the General Services Report was accepted.

Marketing Report
(Item VI.A.6.) Approved.

Development Report
(Item VI.A.7.) Approved.

Unfinished Business
(Item VII.) None.

Consent Agenda Trustee Benavidez moved to approve the Consent Agenda in its entirety which consisted of Items VIII.A.1-3:

1. Discussion and possible Board action to approve contract terms for Library Automation Services provided to Boulder City Library, Nellis AFB Library, Springs Preserve Library and North Las Vegas Library District. Authorized the Executive Director to execute new contracts for library automation services for the 2009-2010 fiscal year with Boulder City Library, Nellis AFB Library, Springs Preserve Library and the North Las Vegas Library District subject to review by Counsel.

Authorized staff to purchase Cisco Systems network switches from Embarq Corporation in the amount of \$69,089.66.

Authorized staff to award a contract for the purchase of two (2) truck cab and chassis with 26' box and rail lift, in accordance with Bid No. 09-18, to Fairway Chevrolet Company for the amount of \$135,892.00.

There was no opposition and the motion carried.

2. Discussion and possible Board action regarding the approval of purchases of Cisco Systems network switches from Embarq Corporation in the amount of \$69,089.66.

3. Discussion and possible Board action regarding contract award for

the purchase of two (2) truck cab and chassis with 26' box and rail life for use by the Courier Department.

(Item VIII.A.1-3)

Discussion and possible Board action to approve payment of Medicare taxes for the past three years beginning with the first quarter of 2006 to reflect the Medicare tax payments for employees hired before 1989. (Item VIII.B.)

Deputy Director, CFO Fred James and Human Resources Director Jerilyn Gregory discussed the complex issue of Medicare tax payments for employees hired before 1989.

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 mandated that almost all state and local employees hired after March 31, 1986, must be covered for Medicare and pay Medicare taxes regardless of their membership in a retirement system. Employees whose services are not covered for social security but who are required to pay the Medicare-only portion of the Federal Insurance Contributions Act (FICA) are referred to as Medicare Qualified Government Employees (MQGE).

The Las Vegas-Clark County Library District was created in 1989 pursuant to Chapter 379 of the Nevada Revised Statutes, which allowed for the establishment and maintenance of a consolidated library district. According to District records there were employees hired by the new consolidated library district that were previously employed by the Clark County Library District prior to March 31, 1986, who had not been subject to mandatory Medicare tax while employees of the county.

Individuals who were newly hired by the newly established consolidated library district became subject to mandatory Medicare coverage. According to Counsel Welt, there was an exception for those already employed by a government agency (Clark County Library District), who were simply transferring from one government agency to another. At this time eighteen (18) individuals are still actively employed with the Las Vegas-Clark County Library District.

Mr. Walters said that once the issue was discovered during an audit, three different specialists have been looking at the issue over the last several months, including a special tax attorney, Mr. Welt and the District's HR Counsel. In September 2008 the District retained Jerome Blut, a tax attorney who specializes in tax liabilities, to investigate the District's potential Medicare tax liabilities with a view to making recommendations which hopefully would lead to the best result for both the District and its affected employees. At Mr. Blut's recommendation, the District began to deduct the Medicare-only portion of FICA in October 2008.

Mr. Blut's research has indicated that the District's liability would be limited to the underreporting during the prior three (3) year period. As an example, the fourth quarter return for 2005 which was filed on or before January 31, 2006, would now be beyond the three (3) year

statute of limitations period and would not subject the District to any Internal Revenue Service exposure.

Mr. Blut advised that, "the District's best and most conservative approach would be to immediately begin amending all prior filed quarterly returns for the past three years beginning with the first quarter of 2006. In addition, all other related employment tax filings (W-2s, et al.) should be amended to properly reflect the correct Medicare tax payments." District records indicate amendments will need to be done for thirty-two (32) individuals. Mr. Walters believed it is the right thing to do, based upon the advice of counsel.

In addition, Mr. Blut has advised staff that Section 6205(a) of the Internal Revenue Code provides relief from the imposition of interest where certain factors are present. The District's situation appears to be covered by the relief provisions.

The Business Office calculated the cost of amending these returns to be \$150,686.38. This amount represents the total amount of Medicare tax payments for these individuals from January 1, 2006 to September 30, 2008. The amount excludes potential interest or penalty fees, which cannot be determined at this time.

There was extensive discussion as Chair Barron and Trustees Benavidez, Crear, Davis-Hoggard and Kirsh questioned staff and counsel on the rationale for paying both the employer and employee portions of the Medicare tax or whether paying any of the back amount is just a drop in the bucket, the reasons behind paying only the last three years, whether the employees involved are aware of the situation and would they be responsible for any back Medicare taxes, whether the affected employees will be able to claim Medicare upon retirement, will the action resolve the issue with the affected employees and whether the District would have to pay interest and penalties on the amount.

Counsel Welt explained that Human Resources law, Social Security law, Medicare law and IRS law each cover parts of the issue. The laws are different in each area and none of the groups talk to each other. Medicare only cares whether the District is a covered employer and does not record whether the Medicare taxes have been paid. The IRS does record whether Medicare taxes have been paid, but the statute of limitations is only three years. Once the District starts amending the paperwork, the District is required to pay the total tax for the previous three years, regardless of whether it is the employer or employee share.

Counsel Welt also said this became an issue once PERS stopped subsidizing health insurance for retirees. What the proposed action will do is assist those affected employees in obtaining Medicare if they choose to when they retire. He also cautioned Trustees that the proposed action is not a guarantee, but rather an evaluation of the best course of action for the District, based upon the review, by a number of people, of the prevailing laws.

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Mr. Walters discussed staff's recommendation for paying only the three years covered under the statute of limitations. He did not feel there was a legal basis upon which he could recommend the payment of public funds going back 20 years when the statute is three years.

Trustee Aguirre moved to authorize payment of Medicare taxes totaling \$150,686.38 for the past three years beginning with the first quarter of 2006 to properly reflect the correct Medicare tax payments for employees hired before 1989. Chair Barron and Trustees Aguirre, Arthurholtz, Carrasco, Davis-Hoggard, Kirsh and Saunders voted to approve. Trustee Benavidez voted to oppose. The motion carried (8 votes to 1 vote).

Discussion and possible Board action to amend the Patron Privacy Policy to include information on the District's use of security cameras. (Item VIII.C.)

Deputy Director Morss said that on November 13, 2003 the Board of Trustees adopted the District's *Patron Privacy Policy* to help govern oversight of all information pertaining to patron record privacy which included information such as a patron's address and what material has been checked out.

Mr. Morss noted that the *Policy* was developed based on the American Library Association's recommendations for patron privacy policies that were also adapted to comply with federal law including the *Patriot Act* and the State of Nevada's strong open record statutes. In recent months discussion in the library community encouraged the use of Patron Privacy Policies to also include information regarding the use of security cameras in public libraries.

Mr. Morss said that staff would use the same procedures when footage from security cameras is requested by law enforcement officials as when they request patron information. A court-ordered subpoena would be required to release the camera recordings. Recordings will only be held by the District for 10 days, unless an incident at the facility would prompt the District to keep the recording for a longer period of time.

Counsel Welt said that security of records of material checked out by patrons is held to a higher standard than that of security tapes and suggested staff be made aware of the difference.

In response to a question from Trustee Davis-Hoggard, Mr. Morss said that security cameras are currently used at the Centennial Hills, Clark County, and Las Vegas Libraries.

Trustee Kirsh moved to amend the *Patron Privacy Policy* to include information on the District's use of security cameras. There was no opposition and the motion carried.

Discussion and possible Board action regarding approval of the 95% construction documents for the Phase III efficiency remodels which

Mr. Rice reported that the Design Review Committee met prior to the Board Meeting. Trustee Aguirre said the Committee recommended that the plans be approved.

Trustee Aguirre moved to approve the 95% construction documents for the Whitney and West Charleston Libraries efficiency remodels and to authorize the Executive Director to approve the 100% construction documents upon completion of the Clark County and City of Las Vegas building department reviews and to proceed with the bidding phase.

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include the Whitney and West Charleston Libraries and proceeding with 100% construction documents and bidding. (Item VIII.D.)

There was no opposition and the motion carried.

Discussion and possible Board action regarding the FY 2009-2010 Tentative Budget submittal to the Department of Taxation and preparation for the May 21, 2009 budget hearing. (Item VIII.E.)

Mr. James and Trustee Aguirre reported on the Finance and Audit Committee meeting held on April 8, 2009. The Finance and Audit Committee reviewed the "Tentative Budget" which is required to be filed with the Nevada Department of Taxation on April 15, 2009. Mr. James noted that the Tentative Budget is for discussion purposes only and there will be adjustments made once the final revenue estimates and subsequent expenditures are received by May 11, 2009, for the District's Budget Hearing scheduled for May 21, 2009.

Mr. James and Mr. Walters commented on changes in the revenue projections received from Clark County. James noted that he received projections the day before the meeting and corrections the day after the meeting which seemed to indicate that the District would receive more property tax revenue than originally projected. Walters cautioned Trustees that projections are just that until the actual revenues have been received by the District, adding that during the current fiscal year, projections indicated the District would received \$7-8 million more than the actual revenue received.

Mr. Walters said that the numbers for the May meeting will be different than shown in the Tentative Budget as staff works with the District's financial advisors and would receive further information from Clark County and the Department of Taxation. The adjustments may alter the levy rate staff presented to the Finance and Audit Committee members at the meeting.

Trustee Aguirre thanked Trustees who attended the meeting. There was no action required on this item.

Announcements (Item IX.)

The next Board Meeting will be held Thursday, May 21, 2009 in the Las Vegas Library at 6:00 p.m.

Trustee Aguirre announced that at the Latin Chamber Luncheon on Friday, April 17, the Chamber would present an award to Mr. Walters for his ten plus years of service to the community. He encouraged Trustees to attend, if possible. The luncheon will be held at the Culinary Training Academy/Nevada Partners on Lake Mead and begin at 11:30 a.m.

Public Comment (Item X.)

None.

Adjournment (Item XI.)

Chair Barron adjourned the meeting at 7:17 p.m.

Respectfully submitted,

M. Frances Barron, Chair