

DISTRICT COURT, COUNTY OF ELBERT, STATE OF COLORADO 751 UTE AVENUE KIOWA, COLORADO 80117 T: (303) 621-2331	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: ELBERT COUNTY LIBRARY DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, a/k/a Pines and Plains Library District;</p> <p>v.</p> <p>Defendant: ELBERT COUNTY BOARD OF COUNTY COMMISSIONERS; a political subdivision of the State of Colorado.</p>	
<p>Attorneys for Plaintiff: Kim J. Seter, Atty. No. 14294 Elizabeth A. Dauer, Atty. No. 43606 SETER & VANDER WALL, P.C. 7400 E. Orchard Rd., Suite 3300 Greenwood Village, CO 80111 T: (303) 770-2700 F: (303) 770-2701 E-mail:kseter@svwpc.com edauer@svwpc.com</p>	<p>Case No.:</p> <p>Div:</p>
<p>COMPLAINT UNDER RULE 106 AND FOR DECLARATORY AND INJUNCTIVE RELIEF</p>	

Plaintiff, Elbert County Library District (“**Plaintiff**”), through its attorneys, Seter & Vander Wall, PC, submit this Complaint under Rule 106 and for Declaratory and Injunctive Relief.

PARTIES, VENUE AND JURISDICTION

1. **Elbert County Library District** (“**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado organized under and by virtue of the Colorado Library Law, Title 24, Article 90 of the Colorado Revised Statutes and established by the County of Elbert, Colorado.

2. **Elbert County Board of County Commissioners** (the “**BOCC**” or the “**County**”) is the controlling board of the County of Elbert, a political subdivision of the State of Colorado.

3. The District is governed by its Board of Trustees (the “**Board**” or “**Trustees**”), which is delegated powers from the Colorado State legislature through the Colorado Library Law, §§ 24-90-101, *et. seq.*, C.R.S. (“**Library Law**”).

4. Venue is proper under C.R.C.P. 98 because the District and the BOCC are organized and existing within Elbert County.

5. The Elbert County District Court has jurisdiction over the parties and the subject matter.

GENERAL ALLEGATIONS

6. The BOCC approved the formation of the District by a Resolution Establishing the Elbert County Library District..., effective November 15, 2000 (“**Establishing Resolution**”) (**Exhibit A**).

7. The Establishing Resolution states:

The Board of Trustees... shall consist of five to seven members and shall be appointed upon the recommendation of the Elbert County Library Board of Trustees. The initial Library District Board shall be appointed within eight (8) days after approval by the electorate of the ballot issue described herein. Thereafter, the Library District Board shall recommend the appointment of new Trustees. The first appointments to the Board of Trustees shall be for the terms set forth in C.R.S. 24-90-108(3)(a). Thereafter, Trustees shall be appointed for the length of terms specified by the bylaws adopted by the Library District Board. The number of Trustees and the number of terms a Trustee may serve shall be specified by the bylaws adopted by the Library District Board.

8. The Establishing Resolution provides that the District “shall have all of the powers and duties and shall perform all of the functions of a Library District under the provisions of C.R.S. 24-90-101, *et seq.* as the same shall be amended from time to time.”

9. The BOCC discussed and considered policy #C-02, titled BOCC Appointments Policy, at a public meeting on December 20, 2017 (the “**Policy**”) (**Exhibit B**).

10. The Policy purports to “describe a standardized process by which citizens are appointed to various bodies authorized by statute, regulation, or BOCC action.”

11. The Policy purports to apply to the District, the Planning Commission, and a list of County established boards.

12. The Policy legislates on the requirements and qualifications for service as a Trustee that differ from the qualifications set forth for a Trustee by the State of Colorado under the Library Law.

13. The Policy imposes burdens, processes and procedures regarding the removal, retention, and appointment of District Trustees that differ from those mandated by the Library Law and the Establishing Resolution.

14. The Policy contains a clause (“**Conformity Clause**”) that provides: “[u]pon adoption of this policy, current appointments will be reviewed for conformity. Individuals or appointed bodies that do not meet the requirements of this policy will request exception, resign, or accept corrective action taken by a majority BOCC decision.”

15. The BOCC approved the Policy at its public meeting on December 20, 2017.

First Claim for Relief

C.R.C.P. 106(a)(4)

**The BOCC Exceeded its Jurisdiction and Abused its Discretion
When it Adopted the Policy**

16. The preceding allegations are incorporated into this First Claim for Relief.

17. The BOCC exceeded its jurisdiction and abused its discretion in that the Policy violates provisions of the Library Law, in at least the following ways.

A. The Trustee selection process required in the Policy is contrary to the Library Law. The BOCC’s sole authority under the Library Law is to ratify or reject a candidate recommended by the Board. The right to establish qualifications and to recommend an applicant, or recommend another applicant after a BOCC rejection, is held by the Board, per C.R.S. § 24-90-108(2)(c); and,

B. The Policy requires that the BOCC “appoint” Trustees to fill vacancies at its annual organizational meeting. C.R.S. § 24-90-108(3)(b) requires that vacancies on the Board be filled “as soon as possible” in the manner in which trustees are regularly chosen. The Library Law further states that trustee appointments shall be ratified by a two-thirds majority vote of the BOCC; except that the failure of the BOCC to act within sixty days upon a recommendation from the District Board shall be considered a ratification of such appointment. C.R.S. § 24-90-108(2)(c); and,

C. The Policy attempts to control the terms of the Trustees by limiting the duration and number of Trustee terms. Library Law dictates that the length and number of terms of trustees of a library district are to be set by the library board in its bylaws, per C.R.S. § 24-90-108(3)(a); and,

D. The Policy states that the Trustees serve “at the pleasure of the BOCC.” The District Board is an independent entity and its Trustees may only be removed for good cause shown. Good cause must be established at a hearing and must be defined in the District Bylaws; and,

E. The Policy defines the qualifications of the Trustees as registered electors in Elbert County over the age of 18, unless otherwise specified by the District bylaws. The Library Law provides that Trustees shall be residents within the legal service area of the District, pursuant to C.R.S. § 24-90-108(1) and no discretion is given to the BOCC or the District Board to alter the qualifications.

18. The BOCC exceeded its jurisdiction and abused its discretion by adopting a Policy that creates an unconstitutional condition on service in a public office. The Policy’s requirement that no person who is a current plaintiff or claimant in any lawsuit involving the County will be considered for appointment or re-appointment by the BOCC is an unconstitutional infringement upon a citizen’s fundamental right to seek office and imposes conditions on service that were not authorized by the State Legislature.

WHEREFORE, the Plaintiff requests that the Court enter an order declaring that the BOCC exceeded its jurisdiction and abused its discretion when it adopted the Policy because the Policy, as it applies to the District, violates several provisions of Library Law and the Constitution.

Second Claim for Relief
C.R.C.P.57

Declaratory Judgment Re: The Application of the Policy Against the District

19. The preceding allegations are incorporated into this Second Claim for Relief.

20. The Plaintiff is a governmental entity whose rights, status and legal relations are affected by the imposition of the Policy.

21. A genuine controversy exists which will be terminated by the entry of a declaratory judgment or decree in this matter.

22. The Library Law and the Establishing Resolution do not authorize the BOCC to dictate the manner in which the District selects and recommends Trustees for ratification by the BOCC.

23. The Library Law and the Establishing Resolution do not authorize the BOCC to dictate the qualifications and requirements of District Trustees.

24. The Policy exceeds the scope of the BOCC's legislative authority and violates the Library Law.

WHEREFORE, Plaintiff requests a declaratory judgment that the Policy, and/or certain provisions of the Policy, are void as applied to the District.

Third Claim for Relief
**BOCC Pre-emption from Legislating on a Matter in Which the State Legislature
Adopted Comprehensive Legislation**

25. The State of Colorado (“**State**”) has plenary authority in matters of statewide concern and municipalities may only regulate a matter of statewide concern if the Constitution or statute so authorizes.

26. The Library Law's procedural requirements, and, the powers and authority delegated by the State to the District through the Library Law, and the limitations imposed thereon, are matters of statewide concern as demonstrated by the comprehensive nature of the Act:

A. The Act establishes a comprehensive procedural and substantive administrative framework for the formation and governance of library districts to effectuate the purpose of promoting the establishment and development of all types of publicly supported free library service throughout the state to ensure equal access to information. § 24-90-102, C.R.S.

B. The State has a substantial interest in counties' uniform application of the Library Law's procedural and substantive requirements.

C. The State has a substantial interest in the uniform ability for library districts and their governing bodies to exercise the powers and decision-making authority delegated by the State in the Library Law.

D. The Policy's application may create significant extraterritorial impacts.

E. The State has traditionally established the procedural and substantive requirements for regulating its political subdivisions like library districts and the provision of public education through the Library Law and its predecessor legislation.

F. The State has traditionally established and delegated the powers and decision-making authority to carry out the Library Law's purpose to the Colorado Department of Education and the Office of the State Librarian and boards of trustees of library districts.

G. The Constitution does not grant the power to establish the procedural and substantive requirements for regulating library services to the BOCC.

27. As matters of statewide concern, the General Assembly of the State of Colorado:

A. Intended to occupy the field of setting the procedural and substantive requirements for regulating library districts and library district boards of trustees when it adopted the Library Law; and,

B. Intended to occupy the field when it established and delegated certain powers and decision-making authority to district boards of trustees under the Library Law and not to other entities like the BOCC.

28. Nevertheless, the Policy:

A. Amends and adds to the procedural requirements for service on a library district board of trustees established by the State in the Library Law; and,

B. Redistributes the decision-making authority delegated to the District by the State through the Library Law to the BOCC.

29. Neither the Constitution, the Library Law, nor any other State statute delegates to counties the authority to adopt legislation that modifies the Library Law's comprehensive administrative framework or delegation of powers and decision-making authority.

WHEREFORE, the District is entitled to a declaration that the Policy is preempted by the Library Law.

Fourth Claim for Relief

Preliminary and Permanent Injunction Against Application of the Policy to the District

30. The preceding allegations are incorporated into this Fourth Claim for Relief.

31. The Plaintiff has a reasonable probability of success on the merits because the Policy contains provisions that are contrary to Library Law and attempts to legislate where the state legislature has adopted comprehensive legislation.

32. A danger of real, immediate, and irreparable injury may be prevented by injunctive relief because non-conformance with the Policy may result in the removal of the Trustees pursuant to the Conformity Clause and the impending expiration of Trustees' terms that would be otherwise eligible for re-appointment.

33. There is no plain, speedy and adequate remedy at law because the BOCC may exercise the power granted by the Policy to impose corrective action on the District and its Trustees. The District stands to lose Trustees with valuable institutional knowledge and demonstrated dedication to provide services mandated by the Library Law.

34. The granting of a preliminary injunction will not disserve the public interest.

35. The balance of equities favors the Plaintiff.

36. The injunction will preserve the status quo pending a trial on the merits.

WHEREFORE, Plaintiff requests the entry of a preliminary and permanent injunction barring any effort by the BOCC to implement the Policy as to the District.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that the Court issue orders:

a. Pursuant to C.R.C.P. 106, declaring that the BOCC exceeded its jurisdiction and abused its discretion when it adopted the Policy because the Policy, as it applies to the District, violates provisions of Library Law and the Constitution;

b. Pursuant to C.R.C.P. 57, declaratory judgment that the Policy, and/or certain provisions of the Policy, is or are void as applied to the District;

c. A declaration that the Policy is preempted by the Library Law;

d. A Preliminary and permanent injunction barring any effort by the BOCC to implement the Policy as to the District;

e. for such other relief as the Court deems just and proper.

Respectfully submitted this 17th day of January, 2018.

SETER & VANDER WALL, P.C.

/s/ Kim J. Seter

Kim J. Seter, Esq.

Elizabeth A. Dauer, Esq.

Plaintiff's Address:
651 W. Beverly Street
Elizabeth, CO
80107

Nancy

RESOLUTION NUMBER _____

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO**

A RESOLUTION ESTABLISHING THE ELBERT COUNTY LIBRARY DISTRICT AND SUBMITTING TO THE REGISTERED ELECTORS OF ELBERT COUNTY AT THE GENERAL ELECTION TO BE HELD ON NOVEMBER 7, 2000, THE QUESTION OF WHETHER THE ELBERT COUNTY LIBRARY DISTRICT SHALL BE AUTHORIZED TO LEVY A MAXIMUM OF 2.816 MILLS UPON REAL AND PERSONAL PROPERTY WITHIN THE DISTRICT FOR THE ESTABLISHMENT, OPERATION, AND MAINTENANCE OF THE ELBERT COUNTY LIBRARY DISTRICT

WHEREAS, notice of public hearings for the establishment of the Elbert County Library District ("Library District" or "District") has been published in the Elbert County News in accordance with the provisions of C.R.S. 24-90-107(2), and C.R.S. 24-90-103(12); and

WHEREAS, the Board of County Commissioners of Elbert County, being the governmental unit authorized to form the Library District, has held public hearings regarding the establishment of the District in compliance with the provisions of C.R.S. 24-90-107(2); and

WHEREAS, the establishment of the Library District in accordance with the terms and conditions set forth in the Memorandum of Understanding ("MOU") (in the form attached hereto) between the Board of County Commissioners and the Elbert County Library Board of Trustees will be in the best interests of the taxpayers and residents of Elbert County ("County") and will promote the general welfare of the County and its inhabitants,

THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Elbert County as follows

1. The Library District shall be established as of November 15, 2000, subject to elector approval at the November 7, 2000 general election of a property tax levy not to exceed 2.816 mills upon all real and personal property within the District, to provide financial support for library operations and maintenance, in compliance with all provisions of the MOU and Colorado Library Law, C.R.S. 24-90-101 et seq. Thereafter, the Elbert County Public Library shall become the Library District

2. The Board of Trustees of the Library District ("Library District Board") shall consist of five to seven members. The initial Library District Board shall consist of five to seven members and shall be appointed upon the recommendation of the Elbert County Library Board of Trustees. The initial Library District Board shall be appointed within eight (8) days after the approval by the electorate of the ballot issue described herein. Thereafter, the Library District Board shall recommend the appointment of new Trustees. The first appointments to the Board of Trustees shall be for the terms set forth in C.R.S. 24-90-108(3)(a). Thereafter, Trustees shall be appointed for the length of terms specified by the bylaws adopted by the Library District Board. The number of Trustees and the number of terms a Trustee may serve shall be specified by the bylaws adopted by the Library District Board.

3. The Library District shall have all of the powers and duties and shall perform all of the functions of a Library District under the provisions of C.R.S. 24-90-101 et seq. (the Colorado Library Law) as the same shall be amended from time to time.

4. The service area of the Library District shall include all territory within the boundaries of Elbert County. No area of the County will be excluded from the Library District. The electors of Elbert County must approve any amount of tax levy not previously established by resolution or ordinance nor previously approved by the electors before the Library District can be established.

5. Subject to the approval of District electors of the Library District, the Library District Board shall be authorized to impose a property tax levy not to exceed 2.816 mills generating total property tax revenue in an amount not to exceed \$475,000.00 in 2001 to provide financial support for the establishment, operation, and maintenance of public libraries within the County. Upon approval of the Library District ballot issue, the County will no longer levy property taxes for library operations and will reduce its property tax mill levy by .816 mills, beginning in 2000 for collection in 2001.

6. The following ballot issue relating to the new property tax levy for the Library District shall be submitted to District electors at the November 7, 2000 TABOR election.

SHALL ELBERT COUNTY LIBRARY DISTRICT TAXES BE INCREASED \$475,000.00 IN 2001 AND ANNUALLY THEREAFTER IN SUCH AMOUNTS AS ARE RECEIVED BY THE IMPOSITION OF AN AD VALOREM PROPERTY TAX LEVY NOT TO EXCEED 2.816 MILLS, COMMENCING WITH TAX COLLECTION YEAR 2001, AND EACH YEAR THEREAFTER, AND SHALL SUCH REVENUE AND INVESTMENT INCOME THEREON AND ALL REVENUE FROM ANY OTHER SOURCE BE COLLECTED, RETAINED, AND SPENT FOR DISTRICT OPERATIONS, CAPITAL IMPROVEMENTS, AND ANY OTHER LAWFUL PURPOSE, AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY

SPENDING REVENUE-RAISING, OR OTHER LIMITATIONS IN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND WITHOUT REGARD TO THE TAX REVENUE LIMITATIONS CONTAINED WITHIN SECTION 29-1-301, ET SEQ., COLORADO REVISED STATUTES?

7. The election costs shall be paid from County Library funds

8. The MOU is hereby approved. If District electors approve the above-referenced ballot issue, and upon ratification of the MOU by the Library District Board, the MOU shall become an intergovernment agreement between the County and the Library District.

PASSED AND ADOPTED this ____ day of _____, 2000, in Kiowa, Colorado, Elbert County, Colorado.

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO

BY: _____
_____, Chairman of the Board

ATTEST:

_____, Elbert County Clerk and Recorder

**A MEMORANDUM OF UNDERSTANDING BETWEEN ELBERT COUNTY
AND THE ELBERT COUNTY LIBRARY BOARD OF TRUSTEES**

This agreement is made the 3rd day of May, 2000, by and between the Board of County Commissioners of Elbert County ("County"), and the Elbert County Library Board of Trustees ("Library Trustees") in regards to the Elbert County Library District ("Library District") pursuant to Section 24-90-109(1)(p), Colorado Revised Statutes.

WHEREAS, the County shall establish the Elbert County Library District, contingent upon the approval by electors of a Library District mill levy not to exceed 2.816 mills.

WHEREAS, the County advocates quality library services for the citizens of Elbert County; and

WHEREAS, the County desires to assist the Library District in becoming a viable and independent entity; and

WHEREAS, the parties desire to enter into a formal written agreement for the provision of services by the County to the Library District during the first year of the Library District's operation if the ballot issue for the imposition of the Library District mill levy is approved by the electors at the general election on November 7, 2000.

NOW, THEREFORE, it is mutually agreed by the parties:

1. Term of Agreement. If the ballot issue authorizing imposition of a maximum ad valorem mill levy not to exceed 2.816 mills is approved, then, subject to ratification by the Board of Trustees of the Library District ("Library District Board"), this agreement shall become an Intergovernmental Agreement between the County and the Library District, and the term of this agreement shall be from November 15, 2000, to December 31, 2000. The parties may renew or extend portions of this agreement by mutual consent.

2. Insurance.

2.1 Casualty and Property Insurance. The County agrees to provide casualty and property insurance coverage for the real property described in Section 5 of this agreement and the personal property located therein, until it is conveyed to the Library District, and the Library District obtains its own coverage. Beginning on January 1, 2001, the cost of such coverage shall be charged to the Library District.

2.2 Errors and Omissions/Public Liability Insurance. The County agrees to provide public liability and errors and omissions insurance coverage for the Library District Board, and Library District employees until the Library District is able to obtain its own

coverage, but in no event later than January 1, 2001. Beginning on January 1, 2001, the cost of such coverage shall be charged to the Library District.

2.3. Health and Dental Insurance. Library District employees shall be covered by the same health and dental plans as are available to County employees until the Library District is able to obtain its own coverage, but in no event later than January 1, 2001. The cost, eligibility, and limitations shall be the same for Library District employees as for County employees. Beginning on January 1, 2001, the cost of such coverage shall be charged to the Library District.

2.4. Other Benefits. The County agrees to make available to Library District employees the same benefits as are available to County employees until they become employees of the Library District but in no event later than January 1, 2001. Beginning on January 1, 2001, the costs associated with such benefits which are currently paid by the County, shall be charged to the Library District. Such benefits may include, but not be limited to, retirement, long term disability, short term disability, life insurance and other optional coverages.

2.5. Workmen's Compensation. Library District employees shall be covered by the County's workmen's compensation policy until the Library District is able to obtain its own coverage, but in no event later than January 1, 2001. Beginning on January 1, 2001, the cost of such coverage shall be charged to the Library District.

3. Personnel Administration. It is the intent of the parties that the current Library staff will be terminated as County employees and hired by the Library District as Library District employees during 2001. Library staff shall remain County employees until the Library District is able to provide personnel administration to its employees, but in no event later than January 1, 2001. Until Library staff become Library District employees, the County will continue to maintain Library staff employee files, process personnel changes, and provide payroll and benefits administration. Upon termination as County employees, any accrued vacation, sick leave, and retirement benefits for the current Library staff shall be paid by the County in accordance with the County plan. Beginning on January 1, 2001, the cost of personnel administration for Library staff shall be charged to the Library District. Any vacation, sick leave, or retirement benefits for Library staff that accrue before January 1, 2001 shall be charged to the County. Any vacation, sick leave, or retirement benefits for Library staff that accrue on or after January 1, 2001 shall be charged to the Library District.

4. Automation and Telephone Services. The County agrees to provide computer services to the Library District on the same basis as services provided in 2000, until such time as the Library District's own system is functional, but in no event later than January 1, 2001. Beginning on January 1, 2001, the cost of such services will be charged to the Library District. The County shall provide a breakdown of the monthly charge by type (e.g., service contracts) until the Library District's own system is functional. The County will maintain equipment

service contracts/maintenance agreements and charge the Library District for its portion of the cost.

The County will transfer, at no cost, existing telephone and computer equipment to the Library District as soon as possible after January 1, 2001, but in no event later than January 1, 2001. The Library District shall be responsible for the cost of installing, operating and maintaining its telephone system.

5. Library Properties. The County shall convey by quit claim deed to the Library District the real properties and improvements thereon currently used for libraries located in Kiowa and Elizabeth. The conveyance from the County to the Library District shall occur no later than January 1, 2001. On or before January 1, 2001, the County shall assign and transfer to the Library District by bill of sale or other appropriate instrument, ownership of all personal property, including but not limited to books, furniture, equipment, and supplies, currently located within all County libraries.

6. Buildings and Grounds Maintenance. The County shall provide turf maintenance, snow removal services, and facility maintenance services to the library properties until ownership is transferred to the Library District. Beginning on January 1, 2001, the cost of such services will be charged to the Library District on the same basis as provided in 2000, but the County shall provide a monthly breakdown of the monthly charge by type (e.g., service contracts).

7. Library District Board of Trustees. If the ballot issue passes, the Board of County Commissioners of Elbert County shall appoint two of its members to a committee which shall appoint the initial Library District Board, which Trustees shall be appointed within eight (8) days after the election. The Library Trustees shall recommend the initial Library District Trustees to the committee. Thereafter, the Library District Board shall recommend the appointment of new Library District Trustees. Trustee appointments shall be ratified by a two-thirds majority of the Board of County Commissioners. The first appointments to the Library District Board shall be for the terms set forth in C.R.S. §24-90-108(3)(a). Thereafter, each Trustee shall be appointed for the length of term specified by the bylaws adopted by the Library District Board. The number of Trustees and the number of terms a Trustee may serve shall be specified by the bylaws adopted by the Library District Board. The Library District Board shall adopt bylaws, rules and regulations for its own guidance and for governing the library in accordance with the provisions of C.R.S. §24-90-109. The Library District Board shall have all other powers and duties which are granted or delegated to the Board in accordance with C.R.S. §24-90-109.

8. Legal Services. The Library District Board shall, at its own expense, obtain legal counsel for those matters deemed appropriate by the Library District Board.

9. Cooperation. The terms, conditions and provisions of this agreement shall be liberally construed in order to promote harmonious association between the County and the Library

District with regard to the matters herein, as well as to provide the framework of a mutually agreeable relationship of the parties in the future.

10. Severability. It is agreed that if any clause, paragraph, sentence, word, phrase, part or portion of this agreement is, shall become or is construed as unenforceable or illegal, then the same shall be stricken and severed here from, and the agreement shall otherwise remain in full force and effect.

ELBERT COUNTY LIBRARY BOARD OF TRUSTEES

BY: [Signature]
Roberta [Name], President

DATE: 5-10-00

ATTEST:
[Signature]
Travis Annie, Secretary

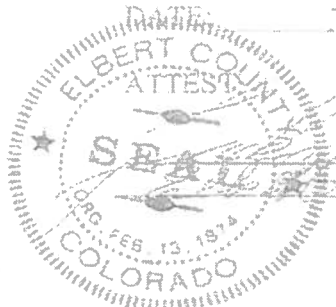
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ELBERT

BY: [Signature]
Bob, Chairman

APPROVED AS TO CONTENT:
[Signature]

DATE: 5-24-00

DATE: 5-24-00



ATTEST:
[Signature]
Clerk and Recorder

APPROVED AS TO FORM:
[Signature]
Attorney

to the Elbert County Board of Commissioners

DATE: 5-24-00



ELBERT COUNTY GOVERNMENT

BOCC Appointments Policy

Policy# C-02

Title: Appointments to Boards, Commissions and Committees

- 1. Purpose:** To describe a standardized process by which citizens are appointed to the various bodies authorized by statute, regulation, or Board of County Commissioners (BOCC) action.
- 2. Applicability:** This policy applies to the BOCC and all citizens appointed to officially designated (See 5.a.(3)) Elbert County Boards, Commissions and Committees. This policy does not govern appointments to individual positions (i.e. persons serving a specific advisory or representative duty but, not as part of a board, commission or committee) required by statute, regulation or other local policy.
- 3. Proponent:** BOCC
- 4. General:** Annually, the BOCC votes to appoint and/or confirm appointment of citizens to various boards, commissions and committees that have specifically defined responsibilities and authorities. Their service on these bodies provide an opportunity for the county to benefit from the expertise, professional experience, and perspectives of our citizens. In order to maximize this benefit, a systematic effort must be made to select the most talented people who are available and willing to serve in support of goals set by the BOCC for our county.

5. Policy:

a. BOCC Guidance:

(1) Boards, commissions, and committees provide valuable advice and recommendations to the County Commissioners in support of the implementation of county-wide goals and plans as established by these elected officials. Their efforts support the provision of services and supportive infrastructure to the citizens of Elbert County and are generally answerable to the BOCC for their actions while serving in their appointed capacity.

(2) The BOCC recognizes that some boards and commissions have established statutory procedures for appointment and defined terms of service. It is, however, expected that even those that have volunteered to serve on those specific "statutory" boards and commissions will act in a manner consistent with the goals of those elected by the citizens to serve as County Commissioners.

(3) The BOCC currently appoints members to four designated standing bodies: the Planning Commission (a statutorily required body whose appointments are governed by CRS 30-28-103), the Elbert County Library Board (a statutorily required body whose appointments are governed by CRS 24-90-108), and the Fair Board and Water Advisory Committee (ad hoc bodies whose appointments are governed solely by this policy). From time-to-time, the BOCC may authorize other ad hoc boards, commissions, or committees. These too will be governed by this policy.

b. Qualifications: Unless otherwise specified by the specific body's bylaws or state and/or federal statute, a person considered for appointment must be at least 18 years of age, and a registered elector in Elbert County. Furthermore:

(1) Unless by unanimous vote of the Commissioners, no person shall serve on more than one BOCC appointed Board, Committee or Commission at a time (unless it is specifically called for in the bylaws or structure of a given committee). Appointments to Ad Hoc Committees created by the BOCC are exempt from the single committee service limitation because members of other BOCC appointed {00319403}

Policy# C-02: *Appointments to Boards, Commissions and Committees*

Boards, Committees and Commissions may be deemed to have key knowledge that could be useful to an Ad Hoc Committee.

(2) No person who is a current plaintiff or claimant in any lawsuit involving the county will be considered for appointment or reappointment.

(3) No person who has been determined by the BOCC to have violated the public trust (e.g. purposely misled the public or used a public position for personal gain, abused authority or mistreated citizens or employees, misused taxpayer dollars, and/or failed to abide by local regulation or statute pertaining to the position considered) will be considered for appointment or reappointment.

(4) No person who is delinquent in required property tax payments will be considered for appointment or reappointment.

c. **Good Standing:** Appointees serve at the pleasure of the BOCC. Any appointee who becomes unqualified to serve based on the requirements of paragraph 5.b.(1)-(4) above, or is informed they have otherwise lost the confidence of the BOCC, is expected to resign his/her position or face removal by vote of the BOCC.

(1) **Removal:** Appointees may be removed by a majority vote of the BOCC, but only after a showing of good cause, as defined in, but not limited to, the bylaws adopted by the body to which they are appointed. Appointees considered for removal will be notified in writing and be given the opportunity to respond prior to formal action by the BOCC.

(2) **Good Cause:** Includes, but is not limited to, actions described in paragraph 5.b.(1)-(4) above, failure to act in accordance with body's governing state or federal statute, violation of the appointed body's bylaws, mishandling of funds, and or failure to abide by generally accepted accounting practices.

d. **Selection Process:** Every effort will be made to ensure appointees have the skills and abilities required of their appointed position and that the bodies they are appointed to are generally reflective of the overall citizenry of the county.

(1) Two months prior to the annual BOCC organizational meeting (generally the second regular meeting in January), staff will publically advertise a listing of vacant and expiring BOCC appointed positions. This advertisement will list desired skills and experience, and specify the general monthly time commitment, and length of terms.

(2) Interested citizens will be asked to submit resumes and letters of intent for consideration by the BOCC one month prior to the annual organizational meeting. Letters of recommendation may also be submitted.

(3) If bylaws for a specific body do not specify otherwise and there are three seats or more to be filled, a citizen from each of the three commissioner districts will be considered for appointment.

(a) Where three or more seats are to be appointed and unless otherwise specified in statute or bylaws, appointees will be nominated from each district by the Commissioner of that district.

(b) Remaining seats, not divisible by three, will be considered "at large" and nominations may be made by any member of the BOCC.

Policy# C-02: *Appointments to Boards, Commissions and Committees*

(c) No person will be directly appointed by any single member of the BOCC. All appointments will be made by majority vote of the BOCC.

(d) Unless otherwise specified by bylaws, or authorizing document (for short-term, ad hoc committees), the terms of appointed service will be up to 3-years. After initial appointment, continuance of service for the length of the term will be confirmed annually.

(e) If a citizen desires to serve beyond his/her initial appointment, a second term must be requested when pending vacancy is advertised (IAW with 5.d.(2) above)

(f) No citizen will serve more than two consecutive terms unless by unanimous vote of the BOCC.

e. Other:

(1) Input from Chairs of Boards, Commissions, and Committees: Though vacancies will be formally advertised, it is expected that members of the BOCC and the Chairs of the various bodies will actively solicit new members. The input of chairs, if provided, will be respectfully considered. However, the BOCC will not accept "slates" of candidates unless otherwise required by statute.

(2) Bylaws: All Boards, Commissions, and Committees, unless otherwise specified by BOCC action, will develop and maintain bylaws that specify an appointment process.

(a) In regard to membership, bylaws will at a minimum specify: the number of citizens to be appointed (ideally a number divisible by three), which positions are associated with which Commissioner district or "at large", the length of service terms (generally three-years), and stagger the start of terms to support continuity.

(b) The appointment process described in organizational bylaws will conform to this policy unless superseded by statute.

(c) Appointed bodies will provide draft copies of any bylaw changes considered to the BOCC for comment prior to adoption.

(3) Conformity: Upon adoption of this policy, current appointments will be reviewed for conformity. Individuals or appointed bodies that do not meet the requirements of this policy will request exception, resign, or accept corrective action taken by majority BOCC decision.

6. References.

- a. CRS 24-90-108 Library Board Appointments
- b. CRS 30-28-103 Planning Commission Appointments

7. Adopted: DECEMBER 20, 2017. Previous versions of policy regarding this subject are rescinded.

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8. Reservation of Authority: The Board of County Commissioners reserves the right to alter, amend, add to, and/or revoke all or part of this policy at any time.

ADOPTED BY MOTION ON THE 20th DAY OF DECEMBER, 2017.

_____ AYE
DANNY WILLCOX, CHAIRMAN

_____ AYE
CHRIS RICHARDSON, VICE CHAIRMAN

_____ AYE
GRANT THAYER, COMMISSIONER

ATTEST: DALLAS SCHROEDER
COUNTY CLERK

BY: _____
DEPUTY, CLERK TO THE BOARD