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May 1, 2003

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Board of County Commissioners of Pueblo County, c/o Mr. Dan Kogovsek
Pueblo City Council, c/o Tom Jagers
Pueblo City and County Library District Board, c/o Don Banner
Mr. Lee Sternal, Attorney at Law

Dear Mr. Banner:

At the request received from each of you for review of specific issues related to the Pueblo City-County Library Board and certain of its members, I undertook that review.

In the process I was provided information by each of your attorneys as well as the attorney for Richard Lee. I also reviewed the minutes of the Library Board of Directors from 1998-2003 and the variety of statutes that cover: Special Districts, Library Districts, Public Officials; Standards of Conduct, Conflict of Interest, as well as other pertinent civil and criminal statutes as they pertain to the facts, as presented to me. Finally, I took into consideration some public comments, as well as some input from Library Board Members and prior members of the Library Board.

I believe it is important to note it became abundantly clear there were several personal agendas that were involved in the overall complaints that were made. Personal agendas resulted in comments being made to the media and in public meetings. Those other agendas have resulted in significant rumors and innuendos that are not corroborated by the minutes of the meetings of the Board of Directors and are clearly inconsistent with the facts that can be corroborated. I limited my review to certain specific issues in order to determine whether or not any criminal acts were committed. Secondly, because there were apparently some violations of the law, I had to consider whether it was appropriate to commence prosecution. Third, I was asked to comment on whether there are sufficient grounds to proceed under either the Standards of Conduct, provisions of the Colorado State Statutes for Public Officials and whether there are ethical issues that would support the need to determine whether or not members of the Board should be removed for good cause.

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As you might expect, when during the course of an investigation, the controversy becomes public with a variety of allegations being made at large, the investigative process is hindered and it is more difficult to sort out fact from fiction. I believe my thorough review of the minutes has allowed me to come to some conclusions that are in the best interest of the library and community.

The specific issues now being addressed include:

1) Whether or not the marketing agreement between the library and Ballantyne Marketing resulted in a criminal conflict of interest sufficient to warrant criminal prosecution? The answer is no!

Correspondence and minutes of the Library Board and its former director Charles Bates indicate that Glen Ballantyne of Ballantyne Marketing was solicited by Mr. Bates to serve the library. It has been alleged that Mr. Ballantyne inappropriately solicited the contract for his company and those allegations are not corroborated by any of the correspondence or minutes of the Board meetings. After review of those minutes, correspondence and the contract, I have concluded that the arrangement between the Library Board and Ballantyne Marketing was accomplished in public hearings after the Board was fully aware of the "conflict of interest". The Board sought the opinions of their legal counsel prior to entering into the contract. Legal counsel informed the Board and Mr. Ballantyne that a conflict of interest did exist. The attorney provided a letter informing the Board that the contract for services would be legal, though could be a significant issue for scrutiny and create problems in the public perception. The Board, after fully considering services requested, the conflict or interest, the cost and limitations that they could place on the contract made a decision at their regular Board meeting in public hearing, outside the presence of Mr. Ballantyne who acknowledged his conflict of interest, that the contract was in the best interest of the library and they entered into the business relationship.

I have concluded that the contract was legal; the services expected were provided; the Board of Directors had ample opportunity to review, question, limit and consider the contract outside the presence of Mr. Ballantyne; and did approve that contract in spite of the "conflict". The Board thereafter, with regularity, discussed the "conflict" and at various times added limits and reporting demands in an effort to ensure that they were getting not only the service expected under the contract, but also that they were complying with the law in allowing such a contract to be granted to a member of the Board of Trustees.

The minutes are replete with references to their satisfaction with the Ballantyne Marketing performance. At their public meetings, the Board even discussed the "conflict" in terms of how a "... disgruntled person in the future may make an issue of

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the agreement and that there is a need to make sure no bad publicity ensues." The efforts of the Board to comply with contracting legally for the services rendered by a member of their Board clearly provides a defensible position to any prosecution for a criminal violation of the conflict of law statutes. It does not appear that this contract was in violation of the criminal law. There were at times votes taken on invoices presented in the consent agenda. The minutes reflect in many of the unanimous votes to approve the financial report that Mr. Ballantyne voted. Those financial reports included invoices of Ballantyne Marketing. There is no record that 72 hours prior to the vote he submitted the proper notice to the Secretary of State. That failure is a violation that could result in criminal prosecution. The Board however was unanimous. No Board member ever presented a question regarding the financial report that was provided prior to the meeting. No member ever questioned the vote of Mr. Ballantyne and all were aware of the conflict. While a violation, the interests of justice do not warrant criminal prosecution for the failure to notify the Secretary of State when the board was itself so attuned to the issues of the conflict of interest.

The standards of conduct imposed upon public officials have the same burden of proof that a criminal case has; that being that a violation occurred "beyond a reasonable doubt". It is doubtful that burden of proof, except for Mr. Ballantyne voting to approve his own invoices, could be met to support a violation of the standards of conduct required of the public officials. It should be noted that once appointed, a library board member is statutorily defined as an officer subject to the Code of Conduct of the State of Colorado. Under the contract the services expected were performed and the auditors have reported that they were satisfied with the invoices as they were presented. The nature of the conflict was reported in the annual audit reports including the Audit Report 2002, and therefore, it seems that the only violation is the appearance of the impropriety that has resulted in exactly what the Board members predicted as possible - "bad publicity".