

**MONTANA LIBRARY LAWS:  
ATTORNEY GENERAL  
OPINIONS AND SUPREME  
COURT DECISIONS**



**MONTANA  
STATE LIBRARY**  
A GREATER STATE OF KNOWLEDGE

## Contents

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Introduction

Disclaimer

41 Op. Att'y Gen. No. 91

42 Op. Att'y Gen. No. 98

46 Op. Att'y Gen. No. 19

46 Op. Att'y Gen. No. 23

47 Op. Att'y Gen. No. 6

48 Op. Att'y Gen. No. 3

49 Op. Att'y Gen. No. 16

53 Op. Att'y Gen. No. 2

53 Op. Att'y Gen. No. 5

54 Op. Att'y Gen. No. 7

Background to the Att'y Gen. Opinion 54, Number 7

FAQ for 54 Op. Att'y Gen. No. 7

Board of Trustees, Butte-Silver Bow Public Library v. Butte-Silver Bow (DA 09-0024)

57 Op. Att'y Gen. No. 3

## Introduction

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This document compiles opinions from the Montana Attorney General and related Supreme Court decisions that relate to Montana Library Laws. The opinions and decisions were gathered from the Montana Judicial Branch [Supreme Court Case Search](#) and [Attorney General's Opinions](#) archive (1899-1992), as well as the Department of Justice's [List of Attorney General Opinions](#) (1993 to present).

All links represented in this compilation were active as of April 2024.

## Disclaimer

Legal resources provided by the State Library are for informational purposes only and should not be construed as legal advice. It is advisable to consult with a qualified attorney for accurate interpretation and application of the law.

## **41 Op. Att’y Gen. No. 91**

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1986 – opinion about county commission authority over salaries, library budgets, and mills levied. Portions of this opinion may have been superseded by 54 Op. Att’y Gen. No. 7 which addresses local government authority over library budgets.

COUNTIES - Authority of county library trustees;  
COUNTY COMMISSIONERS - Authority over county library matters;  
LIBRARIES - Authority of library trustees;  
TAXATION AND REVENUE - Obligation of county commissioners to levy property taxes for county library expenses;  
MONTANA CODE ANNOTATED - Sections 22-1-304, 22-1-309(6), 22-1-310, 39-31-103(1), 39-31-208;  
OPINIONS OF THE ATTORNEY GENERAL - 35 Op. Att'y Gen. No. 71 (1974), 39 Op. Att'y Gen. No. 5 (1981), 39 Op. Att'y Gen. No. 38 (1981), 41 Op. Att'y Gen. No. 45 (1986).

HELD: 1. A board of county commissioners does not have the authority to modify the decision of county library trustees concerning wage and salary amounts for library employees.

2. A board of county commissioners does not have the authority to modify an annual library budget adopted by county library trustees.
3. A board of county commissioners does not have the authority to refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by county library trustees.

13 November 1986

John P. Connor Jr.  
Jefferson County Attorney  
Jefferson County Courthouse  
Boulder MT 59632

Dear Mr. Connor:

You have requested my opinion concerning the following questions:

1. Does the Jefferson Board of County Commissioners have the authority to override a determination by the trustees of the Jefferson County Library to grant pay increases to library personnel?
2. Does the Jefferson Board of County Commissioners have the authority to modify the annual budget submitted by the trustees of the Jefferson County Library even though the amount of property taxes necessary to satisfy such budget falls within the statutory limit of five mills under section 22-1-304(1), MCA?
3. Does the Jefferson Board of County Commissioners have the discretion to levy no millage for funding of the Jefferson County Library?

I conclude that each of these questions must be answered negatively.

The Jefferson County Library was established under sections 22-1-301 to 317, MCA. In summary those

provisions authorize the formation of a city, county, or consolidated city-county free public library. Once created the library is governed by a board of trustees with broad powers and duties, including the obligation to prepare an annual budget "indicating what support and maintenance of the public library will be required from public funds" and to employ a chief librarian and such other employees as are deemed necessary to administer the library. §§ 22-1-309(6), 22-1-310, MCA. The latter responsibility further expressly extends to fixing and paying library employees' salaries and compensation. § 22-1-310, MCA. The annual budget must be submitted by the trustees to the governing body of the city or county which, in turn, may impose a property tax levy not to exceed five mills for the purpose of raising the funds required to maintain the library. § 22-1-304(1), MCA. All monies deriving from such levy must be placed into the public library fund, may not be used for any purpose other than operation of the library, and cannot be distributed from the fund without order or warrant of the trustees. § 22-1-304(4) and (5), MCA.

This brief description of the library trustees' powers and duties reflects substantial autonomy from the governing body of the local governmental unit within which the library has been established. See Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 24, 555 P.2d 507, 509 (1976) ("[u]nder the Library Systems Act, as a whole, the board of trustees is given independent powers to manage and operate the library"). The trustees are thus quite clearly granted direct responsibility for administering the library in a manner largely independent of city or county control. That the fiscal operation of the library is heavily interrelated with that of the local government does not, at least insofar as the trustees have been accorded explicit authority, mean their determinations are subject to plenary review and possible modification by, in this instance, a board of county commissioners. Any different conclusion would eviscerate the trustees' authority and render them little more than the county's agents--a conclusion which is simply unsupported by a fair reading of the involved statute.

I recognize that library employees may well be considered city or county employees for certain purposes. See Municipal Employees Local 2390 v. City of Billings, *supra*; see 39 Op. Att'y Gen. No. 38 (1981) (soil conservation district and district court employees

considered county employees); 35 Op. Att'y Gen. No. 71 (1974) (fire district employees considered county employees). However, such status does not subordinate the trustees' express grant of authority to fix compensation levels to county commissioner control. Cf. 41 Op. Att'y Gen. No. 45 (1986) (mayoral appointment of administrative assistant not subject to city council approval). Municipal Employees Local 2390, in particular, does not militate against the trustees' authority in such matters as to library employees; there the Court merely concluded that a library employee, who had participated in union representation election under section 39-31-208, MCA, and became part of a diverse city employee bargaining unit, was subject to the terms and conditions of the collective bargaining agreement covering such unit and to which the City of Billings was signatory. Under those circumstances the city was held to be the employee's "public employer" as that term is defined in section 39-31-103(1), MCA, and used throughout the public employee collective bargaining law. The unique facts and statutory considerations underlying Municipal Employees Local 2390 clearly do not stand for the proposition that the trustees here are subject to the control of the county commissioners concerning questions of library employee compensation. The trustees' express authority under section 22-7-310, MCA, to fix such employees' compensation accordingly prohibits the commissioners from establishing a different wage level.

The trustees' power under section 22-1-309(6), MCA, to adopt an annual budget forecloses the board of county commissioners from effecting changes in such budget. The obvious purpose of the trustees' authority in library budget matters is to allow application of their informed judgment to fiscal issues. Such authority is, moreover, an integral aspect of the trustees' independence without which many of their other express powers would be rendered meaningless. The board of county commissioners' only role in library budget matters is to assign a property tax levy amount, which presently cannot exceed five mills, sufficient to satisfy the budgetary needs. The commissioners' function is thus purely ministerial with respect to the imposition of the levy.

Finally, use of the permissive "may" in section 22-1-304(1), MCA, does not, in view of the trustees' independent budgetary authority, grant the county



commissioners discretion not to levy any millage, since the existence of such discretion would effectively supersede the trustees' express powers. Section 22-1-304(1), MCA, must instead be read together with the trustees' broad control over library operations and, if so construed, does not permit an interpretation which leaves within the county commissioners' determination whether some or none of the millage necessary to meet library budget demands should be assessed. See 39 Op. Att'y Gen. No. 5 (1981).

THEREFORE, IT IS MY OPINION:

1. A board of county commissioners does not have the authority to modify the decision of county library trustees concerning wage and salary amounts for library employees.
2. A board of county commissioners does not have the authority to modify an annual library budget adopted by county library trustees.
3. A board of county commissioners does not have the authority to refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by county library trustees.

Very truly yours,

MIKE GREELY  
Attorney General

## **42 Op. Att’y Gen. No. 98**

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1988 – opinion about the authority of city commission to overrule library board decision about library property.

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 98

CITIES AND TOWNS - Authority to overrule decision of city library board of trustees;  
LIBRARIES - Authority of library board of trustees;  
URBAN RENEWAL - Authority of city commission to overrule library board decision in order to promote redevelopment in urban renewal area;  
MONTANA CODE ANNOTATED - Section 22-1-309(4);  
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 91 (1986).

HELD: A city commission does not have the authority to overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs.

18 July 1988

David Gliko  
Great Falls City Attorney  
P.O. Box 5021  
Great Falls MT 59403-5021

Dear Mr. Gliko:

OPINIONS OF THE ATTORNEY GENERAL

You have requested my opinion on the following question:

May the city commission overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to service the library's parking needs?

In 1965 the Board of Trustees of the Great Falls City Library asked the city to issue general obligation bonds in order to finance the construction of a new library. The bond issue was placed on the ballot and approved by the Great Falls voters. The general obligation bonds were issued in the name of the city, and the new library was constructed. Some of the bond money was used to purchase a parking lot for the library. Title to the parking lot was conveyed by the sellers to the city. Since 1965 the library board has leased out parking spaces in the lot to the public and has received the income from the leases.

Recently a developer who is interested in refurbishing an apartment building adjacent to the library parking lot offered to purchase or lease the lot in order to meet the parking requirements of the city's urban renewal plan. After two public hearings the library board declined to sell or lease the parking lot to the developer. The city commission has asked whether it has the legal authority to override the library board's decision and transfer the property to the developer in an effort to promote redevelopment in the urban renewal area.

The powers and duties of the library board of trustees are set forth in section 22-1-309, MCA, which provides in part:

The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

....

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer

OPINIONS OF THE ATTORNEY GENERAL

required by the library and to insure the real and personal property of the library[.]

The board acquired the parking lot by purchase and has owned and held it in the name of the city for the use and purposes of the library. Section 22-1-309(4), MCA, gives the board the express power to sell, exchange, or otherwise dispose of the parking lot whenever it is no longer required by the library.

I have found no similar statutory authority granting the city commission the right to override the library board's decision concerning disposition of real property which is owned and held by the board and used for library purposes. The fact the title to the parking lot is held in the name of the city merely shows compliance with section 22-1-309(4), MCA, and does not provide a basis for the city to transfer an interest in the property without the approval and request of the library board.

In 41 Op. Att'y Gen. No. 91 (1986) I considered whether a board of county commissioners could override a decision by the county library board of trustees concerning pay increases for library personnel. I noted in the opinion that library trustees are granted direct responsibility for administering the library in a manner largely independent of city or county control. The reasoning of that opinion applies as well to your question. Insofar as the library trustees have been given explicit authority under the Library Systems Act, their determinations may not be subjected to plenary review and possible modification by the city commission. I conclude that the city commission may not overrule the decision by the library board of trustees not to sell or lease the library's parking lot.

As in my previous opinion, I do not find the Montana Supreme Court's decision in Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 555 P.2d 507 (1976), to be authority for the proposition that the library trustees are subject to the control of the city commission in matters expressly given to the trustees by statute. While the Court referred to the library board as an "adjunct of the local government" for the purpose of determining which entity is to be viewed as the "public employer" of library personnel, the Court also acknowledged that the library board is given independent powers to manage and operate the library.

I do not address, nor do I intend in this opinion to limit in any way, the authority of the city under the

OPINIONS OF THE ATTORNEY GENERAL

Urban Renewal Law as set forth in Title 7, chapter 15, part 42, MCA. See, e.g., § 7-15-4259, MCA.

THEREFORE, IT IS MY OPINION:

A city commission does not have the authority to overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs.

Very truly yours,

MIKE GREELY  
Attorney General

## **46 Op. Att'y Gen. No. 19**

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1996 – opinion on ability of library to avoid taxing limitations and ability of county to contract with a city library for library services.

## 46 Op. Att'y Gen. No. 19

CITIES AND TOWNS - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;  
COUNTIES - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;  
COUNTIES - Creation by county that offered library services prior to 1986 of new taxing unit to provide library services and avoid statutory tax limitations;  
INTERGOVERNMENTAL COOPERATION - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;  
LIBRARIES - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;  
LIBRARIES - Creation by county that offered library services prior to 1986 of new taxing unit to provide library services and avoid statutory tax limitations;  
LOCAL GOVERNMENT - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;  
LOCAL GOVERNMENT - Creation by county that offered library services prior to 1986 of new taxing unit to provide library services and avoid statutory tax limitations;  
TAXATION AND REVENUE - Creation by county that offered library services prior to 1986 of new taxing unit to provide library services and avoid statutory tax limitations;  
MONTANA CODE ANNOTATED - Sections 7-11-1101 to -1112, 7-33-2105(3), -2109(2), 15-1-101, 15-10-401 to -412, 22-1-301, -303, -304, -309, -312, -315, -316, -401 to -413, 22-15-316;  
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 74 (1990), 42 Op. Att'y Gen. No. 113 (1988), 42 Op. Att'y Gen. No. 98 (1988), 42 Op. Att'y Gen. No. 80 (1988), 41 Op. Att'y Gen. No. 91 (1986).

HELD:

1. A county in Montana that offered library services prior to 1986 cannot form a new taxing unit and avoid the tax limitations of I-105 by establishing a public library pursuant to Mont. Code Ann. § 22-1-303, or by forming a multijurisdictional service district to provide library services pursuant to Mont. Code Ann. § 7-11-1105.
2. A county that has established a county free library pursuant to Mont. Code Ann. § 22-1-303 is authorized to contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund.

June 25, 1996

Mr. Russell R. Andrews  
Teton County Attorney  
P.O. Box 899  
Choteau, MT 59422

Dear Mr. Andrews:

You have requested my opinion on several questions which I have phrased as follows:

1. Do county public library services that have evolved over time (as opposed to being established pursuant to Mont. Code Ann. § 22-1-303), have the taxing powers enumerated in Mont. Code Ann. § 22-1-304, and are they subject to the tax limitations of Mont. Code Ann. §§ 15-10-401 to -412?
2. For the future, may a county that has offered library services prior to 1986, establish library services pursuant to statute so as to avoid the tax limitations of Mont. Code Ann. §§ 15-10-401 to -412?



3. May a county establish a county public library pursuant to Mont. Code Ann. § 22-1-303, then contract with city public libraries to provide all governance and services, and fund the contract with the public library fund authorized by Mont. Code Ann. § 22-1-304?

You state that Teton County has recently discovered that it did not follow statutory procedures for the creation of a free county library, even though it has levied taxes and contracted for library services for county residents with the libraries in Great Falls, Choteau, Fairfield, and Dutton. Your first question seeks a ruling as to the legal status of the entity providing the library services.

A city or county "public library," as that term is defined in Mont. Code Ann. § 22-1-301, is a species of public corporation whose authority and relationships to general city or county governments are defined by state law. See Kerr v. Enoch Pratt Free Library, 149 F.2d 212 (4th Cir. 1945); Local 2390 v. City of Billings, 171 Mont. 20, 555 P.2d 507 (1976); 42 Op. Att'y Gen. No. 98 (1988); 41 Op. Att'y Gen. No. 91 (1986); McQuillin Municipal Corporations § 2.03a (3d ed. 1990).

The case of Henderson v. School District No. 44, 75 Mont. 154, 160-62, 242 P. 979, 980 (1926), made several important distinctions regarding the organization of public corporations, and the case is still recognized as good law. Mancoronal v. Northern Mont. Jt. Refuse Disposal Dist., No. 95-DV-001 (Mont. 9th Jud. Dist. Ct. Feb. 9, 1996) (order granting defendant's motion for summary judgment). Henderson held that public corporations are either de jure (organized in compliance with existing law), de facto (organized in certain unsuccessful attempts to comply with existing law), or void (organized without attempting to comply with an existing law). The legality of the organization of a de jure corporation "is impregnable to assault in the courts from any source." The legality of the organization of a de facto corporation "can be questioned only by the state in a direct proceeding." See Mont. Code Ann. § 27-28-101(3). In the case of a void corporation, "the attempted exercise of corporate powers may be attacked, by a private individual who will be affected thereby, in an appropriate proceeding." Henderson, 75 Mont. at 161-62; see also McQuillin Municipal Corporations §§ 12.102 to .107 (3d ed. 1990).

It appears that Teton County public library services are either a de facto corporation or a void corporation, since the county, according to the facts as you state them, failed to comply with the procedural steps required to create the corporate entity. The legal consequences of a determination that an entity is one or the other are significant and far-ranging. I am unable to answer your first question without a factual determination that past public library services in Teton County amount to either a de facto corporation or a void corporation. It is not within the legitimate scope of an Attorney General's Opinion to determine a factual question, so I cannot answer your questions about the past actions of the county regarding library services, nor can I give my opinion whether the city libraries of Choteau, Dutton, and Fairfield were lawfully established.

Regarding the options open to Teton County for providing library services in the future, there are several ways in which the county can proceed. The county may establish a public library pursuant to Mont. Code Ann. § 22-1-303; then, pursuant to Mont. Code Ann. § 22-1-312, -315, or -316, the county library may merge or combine with another library. Also, the county may join a library federation under Mont. Code Ann. §§ 22-1-401 to -413. Finally, the county may enter into interlocal agreements with one or more municipalities to form a multijurisdictional library service district under Mont. Code Ann. §§ 7-11-1101 to -1112. The Teton County Commissioners would prefer to establish either a free county library or a multijurisdictional service district.

A primary focus of your second question regarding the county's provision of library services in the future is the selection of a method of providing those services that avoids the tax limitations of Mont. Code Ann. §§ 15-10-401 to -412 (popularly known as I-105). In understanding these tax limitations, we must start with the operative words of the statute: "[T]he actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year." Mont. Code Ann. § 15-10-412(2). As you can see, to answer your question I must determine what is the "taxing unit" with regard to the county's provision of library services. The term is described precisely in statute:

The phrase . . . "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

Montana Library Laws: Attorney General Opinions and Supreme Court Decisions

Mont. Code Ann. § 15-1-101(2). Teton County is clearly a "taxing unit." 43 Op. Att'y Gen. No. 74, at 286-87 (1990); 42 Op. Att'y Gen. No. 80 at 314-15 (1988). To answer your question, I must also determine if a smaller governmental unit, the public corporation that directly offers the library services, is a taxing unit.

The respective budgetary powers of public library boards of trustees and local government governing bodies are set forth in statute:

The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service . . . .

Mont. Code Ann. § 22-1-304.

The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

. . . .

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body.

Mont. Code Ann. § 22-1-309.

A comparison with rural fire districts, discussed as taxing units in 42 Op. Att'y Gen. No. 80 (1988), is instructive. That opinion concluded that

a fire district operated by the county and not by a board of trustees is not a "taxing unit." A rural fire district operated by a board of trustees, however, is a "taxing unit" within the meaning of section 15-10-412, MCA.

42 Op. Att'y Gen. No. 80 at 315 (1988). Attorney General Greely determined the difference to be that when the board of county commissioners operated the district, the commissioners established the tax levy. When the commissioners appointed a board of trustees to operate the fire district, the statutes gave the trustees the authority to establish tax levies. Mont. Code Ann. §§ 7-33-2105(3) and -2109(2).

Although public library boards of trustees do have certain powers that are granted by statute, 42 Op. Att'y Gen. No. 98 (1988), 41 Op. Att'y Gen. No. 91 (1986), they are not authorized by law to establish tax levies. Accordingly, I find that county library boards must be distinguished from rural fire districts, and that library boards are not "taxing units" under the reasoning of 42 Op. Att'y Gen. No. 80 (1988).

It has been argued that the holding in a previous Attorney General's Opinion implies the contrary position. The previous opinion held as follows:

A board of county commissioners does not have the authority to refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by county library trustees.

41 Op. Att'y Gen. No. 91 at 396 (1986). In the situation you present, it might be argued that this holding authorizes library trustees in Teton County in effect to set the mill levy within the statutory millage limits. For several reasons, I do not believe that the holding in 41 Op. Att'y Gen. No. 91 currently has that effect.

Initially, a distinction must be made between a board of county commissioners' authority relative to a board of county library trustees and its authority relative to a board of city library trustees. It should be noted that the holding in 41 Op. Att'y Gen. No. 91 dealt with two county-level entities. A county library

board of trustees is formed pursuant to Mont. Code Ann. § 22-1-308, and has the powers and duties enumerated in Mont. Code Ann. § 22-1-309. A city library board of trustees may be formed and operate pursuant to these same statutes; in addition, a city library board may assume the functions of a county library pursuant to Mont. Code Ann. § 22-1-315, and the trustees may contract directly with the board of county commissioners. If the city library trustees do so contract, the county is obligated to pay only "such sum as may be agreed upon," Mont. Code Ann. § 22-1-315(2), and thus the city library board would be further constrained in their adoption of a budget. In sum, the holding in 41 Op. Att'y Gen. No. 91 does not apply directly to all library funding situations.

In any event, it should be remembered also that 41 Op. Att'y Gen. No. 91 discussed the relative authority of county library trustees and county commissioners under the legal regime that existed prior to the passage of I-105. We now must harmonize Mont. Code Ann. §§ 22-1-304, 22-1-309 **and** 15-10-412. Schuman v. Bestrom, 214 Mont. 410, 415, 693 P.2d 536, 538 (1985). A key phrase in the holding in 41 Op. Att'y Gen. No. 91 was "within statutory millage limits." Thus, the opinion recognizes that whatever power exists in the library board of trustees relative to taxation, that power is subject to statutory limits on the power of the county to tax. The I-105 limits were not in existence when the prior opinion was written, but it is clear that the reference to "statutory millage limits" in the prior opinion expresses a concept broad enough to encompass the I-105 limits.

Thus, it is my conclusion that the holding in 41 Op. Att'y Gen. No. 91 does not support the proposition that library trustees in Teton County could in effect set mill levies at will as long as the levies were within the millage limits established in Mont. Code Ann. § 22-1-304.

I also conclude that multijurisdictional service districts for libraries are not taxing units under I-105. Multijurisdictional service districts are established by interlocal agreement between municipalities and/or counties. Mont. Code Ann. §§ 7-11-1101 and -1105. They have no independent governing body or any budgetary powers independent of the governing bodies of the local governments organizing the districts. Mont. Code Ann. § 7-11-1112. See also Mont. Code Ann. § 7-11-1111(4). Multijurisdictional service districts do not fit the statutory definition of taxing units.

In answer to your second question, then, I conclude that Teton County cannot form a new taxing unit and avoid the tax limitations of I-105 by establishing a public library pursuant to Mont. Code Ann. § 22-1-303, or by forming a multijurisdictional service district to provide library services pursuant to Mont. Code Ann. § 7-11-1105.

Your final question has to do with the power of the county to contract with municipal libraries in order to discharge the duty which the county has assumed to provide library services to county residents. Specifically, you ask whether the board of county commissioners may contract directly with the boards of trustees of the municipal libraries of the county, whether the municipal libraries may assume all county library functions, and whether the funds for these contracts may come directly from the county library fund. The operative statute states:

(1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

Mont. Code Ann. § 22-1-315.

Montana Library Laws: Attorney General Opinions and Supreme Court Decisions

The plain words of Mont. Code Ann. § 22-1-315(1) answer your first query in the affirmative. When that is the case, we should go no farther in construing a statute. Gulbrandson v. Carey, 272 Mont. 494, 500, 901 P.2d 573, 577 (1995). In answering your second query, we must examine the phrase "the free public library of such incorporated city shall assume the functions of a county free library." Mont. Code Ann. § 22-1-315(2). Does this mean "all functions" or merely "some functions"? The phrase should be construed in the context of the rest of the act, City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971). I believe that a reasonable construction of this phrase would authorize the city library to assume "all functions" of the county library, because the board of county commissioners may contract directly with the board of trustees of a city library, thus leaving no county board of library trustees to administer any remaining functions of the county library. Mont. Code Ann. § 22-1-315(1). Your third query is also answered in the affirmative by the plain words of Mont. Code Ann. § 22-1-315(2), which authorizes payment for services "out of the county free library fund."

THEREFORE, IT IS MY OPINION:

1. A county in Montana that offered library services prior to 1986 cannot form a new taxing unit and avoid the tax limitations of I-105 by establishing a public library pursuant to Mont. Code Ann. § 22-1-303, or by forming a multijurisdictional service district to provide library services pursuant to Mont. Code Ann. § 7-11-1105.
2. A county that has established a county free library pursuant to Mont. Code Ann. § 22-1-303 is authorized to contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund.

Sincerely,

JOSEPH P. MAZUREK  
Attorney General

jpm/rfs/bjh

## **46 Op. Att'y Gen. No. 23**

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1996 – opinion about forming multijurisdictional service districts and taxing burdens within those districts

## 46 Op. Att'y Gen. No. 23

CITIES AND TOWNS - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

COUNTIES - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

INTERGOVERNMENTAL COOPERATION - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

LIBRARIES - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

LOCAL GOVERNMENT - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

MONTANA CODE ANNOTATED - Sections 7-11-1101 to -1112, 15-10-401 to -412, 22-1-304 to -317;

OPINIONS OF THE ATTORNEY GENERAL - 46 Op. Att'y Gen. No. 19 (1996), 46 Op. Att'y Gen. No. 17 (1996), 44 Op. Att'y Gen. No. 11 (1991).

HELD:

1. A city and a county may form a multijurisdictional library service district if they meet all statutory requirements, including that: (1) any existing contract for library services involving residents of one or more of the participating jurisdictions has lawfully expired; (2) any and all requirements of Mont. Code Ann. §§ 7-11-1101 to -1112 are met; and (3) any applicable requirements of Mont. Code Ann. §§ 15-10-401 to -412 are met.

2. A multijurisdictional service district may not be formed for the sole purpose of equalizing the tax burden among those currently using the service, but as long as the district provides services in the manner required by Mont. Code Ann. § 7-11-1101, it may also use a multijurisdictional service district to equalize the tax burden among those who use the service.

August 16, 1996

Mr. Paul Luwe  
Bozeman City Attorney  
P.O. Box 640  
Bozeman, MT 59771-0640

Dear Mr. Luwe:

You have requested my opinion on the following question:

May a city and a county establish a multijurisdictional library service district upon the expiration of their interlocal agreement concerning library services, in order to equalize the tax burden among those who are currently using the library?

Your letter of inquiry indicates that currently Gallatin County has an annual contract with the Bozeman City Library (as well as contracts with four other city libraries within the county) which provides that the city library will furnish library services to rural residents of the county. Recently, the trustees of the Bozeman City Library have noted what they consider a severe funding inequity between the taxpayers of the City of Bozeman and the taxpayers of Gallatin County with respect to the library. You also cite statistics showing that use of the library by county residents has recently increased relative to that of city residents. This situation is of great concern to the board of trustees of the Bozeman City Library. One suggested solution is the establishment of a multijurisdictional district for library services. I am also informed that the voters of Gallatin County have passed a ballot issue authorizing the county commissioners to increase the library levy from 1.5 to 5 mills, so this may ameliorate the situation.

In light of these circumstances, your question raises two primary concerns: (1) the mechanics of a possible transition from the current situation where the city library has assumed county library functions

Montana Library Laws: Attorney General Opinions and Supreme Court Decisions (Mont. Code Ann. § 22-1-315), to a multijurisdictional library service district ("MLSD") (Mont. Code Ann. §§ 7-11-1101 to -1112); and (2) the means available under law, if any, for "equalizing the tax burden among those who will be using the service."

As you know, my predecessor addressed a somewhat similar situation in Lake County in 44 Op. Att'y Gen. No. 11 (1991). Several significant differences exist between the situation you present and the situation discussed in that opinion. For reasons I discuss below, those differences limit the applicability of the previous opinion to the situation you present.

Municipalities and counties may form multijurisdictional service districts to provide either "(1) a higher level of service than is available through the local governments forming such a district, or (2) services that are not available through the governments forming such a district." Mont. Code Ann. § 7-11-1101. Library services are specifically listed as services that such districts may provide. Mont. Code Ann. § 7-11-1102(2)(c).

There are several statutory restrictions on multijurisdictional library service districts: (1) the establishment of an MLSD may not supersede or void an existing agreement for the same service in the area (Mont. Code Ann. § 7-11-1111(3)); (2) the administration of an MLSD must be conducted pursuant to Mont. Code Ann. §§ 22-1-305 to -317 (Mont. Code Ann. § 7-11-1111(4)); (3) property taxes levied for an MLSD must be added to the taxes levied under Mont. Code Ann. § 22-1-304 (Mont. Code Ann. § 7-11-1112(1)); (4) property taxes levied to support an MLSD are subject to the tax limitations of I-105 (Mont. Code Ann. §§ 15-10-401 to -412). 46 Op. Att'y Gen. No. 19 (1996). In addition, the current arrangement whereby the Bozeman City Library has assumed the functions of the Gallatin County Library may not be terminated without six months' notice by either party. Mont. Code Ann. § 22-1-315(3).

As you can see, several budgetary and library-related statutes affect the formation of an MLSD, and all must be harmonized if possible. Mercury Marine v. Monty's Enters., 270 Mont. 413, 417, 892 P.2d 568, 571 (1995). I see no inherent conflict in any of these statutes, but care must be taken to ensure that they are all observed. It is clear that a city and a county may form a multijurisdictional library service district if they meet all statutory requirements, including that: (1) any existing contract for library services involving residents of one or more of the participating jurisdictions is lawfully terminated, (2) any and all applicable requirements of the multijurisdictional service district law (Mont. Code Ann. §§ 7-11-1101 to -1112) are met, and (3) any and all applicable requirements of I-105 (Mont. Code Ann. §§ 15-10-401 to -412) are met.

The second issue concerns formation of an MLSD with the purpose of equalizing the tax burden among those who will be using the service. You argue at length in your letter that equalizing the tax burden among those currently using the service constitutes a "higher level of service," in the words of Mont. Code Ann. § 7-11-1101. However, my reading of the statute suggests that equalizing the tax burden, standing alone, does not satisfy this criterion. The statute states:

Municipalities and counties may form multijurisdictional service districts to provide:

(1) a higher level of service than is available through the local governments forming such a district; or

(2) services that are not available through the governments forming such a district.

Mont. Code Ann. § 7-11-1101. I agree with you that the legislature clearly contemplated tax equity as one important reason for the passage of this law, but the plain words of the statute control prior to any invocation of legislative intent. Gulbrandson v. Carey, 272 Mont. 494, 500, 901 P.2d 573, 577 (1995); 46 Op. Att'y Gen. No. 17 at 3-4 (1996).

The statute speaks plainly of forming a multijurisdictional service district to provide either a higher level of services or services that are not available. "Services," when used in the context of governmental functions, connotes meeting some perceived need of the community--such as a need for library services, park or recreational services, road maintenance services, or other services listed in Mont. Code Ann. § 7-11-1102. Equalizing the tax burden necessary to support a service is more in the nature of carrying out a

Montana Library Laws: Attorney General Opinions and Supreme Court Decisions  
policy than it is of providing a service. But, these two actions are not mutually exclusive. The statute does not require that providing increased services be the **only** function of a service district, only that providing increased services must be **at least one** function of a proper multijurisdictional service district. State v. Berger, 259 Mont. 364, 367, 856 P.2d 552, 554 (1992) (statutory interpretation must give effect to all words used).

In sum, the legislature directed that a multijurisdictional service district must provide services in one of the two manners specified in Mont. Code Ann. § 7-11-1101. If the district also provided for an equalized tax burden among those currently using a service, that would surely be in keeping with the legislature's intent in passing the law and would be lawful. Since your question is premised on the assumption that the current contract for library services will expire, at that point it could certainly be argued that a newly-formed MLSD would meet the increased service criteria of Mont. Code Ann. § 7-11-1101, since following the expiration of the contract county library services would not be provided at all.

Under the circumstances you present 44 Op. Att'y Gen. No. 11 (1991) is not controlling. The holding of that opinion was premised on two assumptions important here: (1) that the new multijurisdictional service district would be formed within an existing service district, resulting in an increased mill levy for providing the same service; and (2) that the (apparently sole) purpose of establishing the new service district would be to raise the mill levy. The situation that gives rise to your question is quite different. You assume: (1) that the city-county library contract will have expired, so there will not be two districts providing the service, and (2) that the new MLSD will make available to out-of-city residents of the Bozeman area services that will not be available when the contract expires. Thus, the holding in 44 Op. Att'y Gen. No. 11 does not apply to the situation you describe.

THEREFORE, IT IS MY OPINION:

1. A city and a county may form a multijurisdictional library service district if they meet all statutory requirements, including that: (1) any existing contract for library services involving residents of one or more of the participating jurisdictions has lawfully expired; (2) any and all requirements of Mont. Code Ann. §§ 7-11-1101 to -1112 are met; and (3) any applicable requirements of Mont. Code Ann. §§ 15-10-401 to -412 are met.
2. A multijurisdictional service district may not be formed for the sole purpose of equalizing the tax burden among those currently using the service, but as long as the district provides services in the manner required by Mont. Code Ann. § 7-11-1101, it may also use a multijurisdictional service district to equalize the tax burden among those who use the service.

Sincerely,  
  
JOSEPH P. MAZUREK  
Attorney General

jpm/rfs/lrb



## **47 Op. Att'y Gen. No. 6**

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1997 – opinion about whether or not a city and county can have a joint library and levy taxes in both the city and county

## 47 Op. Att'y Gen. No. 6

CITIES AND TOWNS - Property in city subject to city and county tax levy for joint city-county library;  
COUNTIES - Property in city subject to city and county tax levy for joint city-county library;  
INTERGOVERNMENTAL COOPERATION - City and county agreement that property in city subject to city and county tax levy;  
LIBRARIES - Property in city subject to city and county tax levy for joint city-county library;  
MONTANA CODE ANNOTATED - Sections 7-14-2501(2), 15-10-402, 22-1- 303, -304, -313 , -316, - 316(2), (3);  
OPINIONS OF ATTORNEY GENERAL -46 Op. Att'y Gen. No. 19 (1996)

HELD:

A city and a county may enter into an agreement to operate a joint city-county library under which both the city and the county may levy taxes on property located in the city.

July 10, 1997

Mr. Bruce Becker  
Livingston City Attorney  
203 South Main  
P.O. Box 1113  
Livingston, MT 59047-1113

Ms. Tara DePuy  
Park County Attorney  
414 East Callender  
Livingston, MT 59047

Dear Mr. Becker and Ms. DePuy:

You have requested my opinion on a question which I have phrased as follows:

If a city and a county operate a joint library pursuant to Mont. Code Ann. § 22-1-316, are both the city and the county authorized to levy taxes on property within the city to operate the joint city- county library?

The City of Livingston owned and operated a city library which was funded by the 7-mill levy authorized by Mont. Code Ann. § 22-1-304. Several years ago, the city entered into an agreement with Park County pursuant to Mont. Code Ann. § 22-1- 316 to operate a joint city-county library. Prior to the enactment of Initiative 105 (Mont. Code Ann. § 15-10-402), the county had levied 2.5 mills of the 5 mills authorized by § 22-1- 304. Under the terms of the library agreement, the 2.5 mills levied by the county were levied only on county property located outside of the city.

You state that the current mills being levied by both units of local government do not meet the library's current operating expenses. The existing library agreement is about to expire and you are renegotiating a new one. A proposal has been made to eliminate the contractual provision which precludes the county from levying 2.5 mills on county property within the city. In that event, the city property would be subject to both the county and city levies to support the same library. You ask whether imposing both levies on the city property results in impermissible double taxation.

Double taxation occurs when "the same property or person is taxed twice for the same purpose for the same taxing period by the same taxing authority." *Lake Havasu City v. Mohave County*, 675 P.2d 1371, 1381 (Ariz. Ct. App. 1983); see also 84 C.J.S. §§ 39, 40. Under this definition, there is no double taxation when two different local government entities impose a tax. With respect to your question, there could be no double taxation because the county and the city are two separate taxing jurisdictions.

## Montana Library Laws: Attorney General Opinions and Supreme Court Decisions

McQuillin defines double taxation differently, highlighting a concern for uniformity within a taxing district:

In order for double taxation to exist, both taxes must be imposed for the same purpose, upon part only of the property of a particular taxing district, and if all property in a given district is taxed under valid levies the result is the same as if a single levy for the total amount were imposed.

McQuillin, Municipal Corporations § 44.23, at 106. Thus, under McQuillin's definition, double taxation would arise only if part of a taxing jurisdiction sustained a double burden for taxes. Such a definition recognizes uniformity and equity within a taxing jurisdiction. This definition is also not applicable to your question, however, because the board of trustees for a joint city-county library cannot be considered a separate and distinct taxing jurisdiction. See 46 Op. Att'y Gen. No. 19 (1996).

Neither the United States Constitution nor the Montana Constitution prohibits taxation by two different taxing jurisdictions for the same service. Article VIII, section 3 of the Montana Constitution provides that the State shall appraise, assess and equalize the valuation of all property to be taxed in the manner provided by law. While this provision has been characterized as requiring "uniformity of taxation among like taxpayers on like property," Department of Rev. v. Puget Sound Power & Light, 179 Mont. 255, 587 P.2d 1282 (1978), it is apparent that this statement refers to the uniform valuation of property within a classification. Department of Rev. v. State Tax Appeal Bd., 188 Mont. 244, 613 P.2d 691, 693 (1980) (constitutional and statutory requirements for equalization or uniformity within a legislative classification cannot be questioned).

I have not discovered any Montana cases which prohibit the taxation by two different taxing jurisdictions to support the same service. In State ex rel. Siegfried v. Carbon County, 108 Mont. 510, 92 P.2d 301 (1939), the City of Red Lodge had imposed a levy for county road and street maintenance and the county had similarly imposed such a levy. Under the express terms of the controlling statute, Rev. Codes Mont. (1935) § 1617, if the city had imposed such a levy it was exempt from payment of the county levy. A similar exemption exists today in Mont. Code Ann. § 7-14-2501(2), which states that a county road levy does not apply to incorporated cities and towns which by ordinance provide for a levy of a like tax.

In Siegfried, a special levy was authorized over and above the standard county levy and the question was whether the city residents could be subject to this additional levy. The court recognized that it is the legislature which determines what property benefits from taxation and which may exempt city property in whole or in part from county-wide taxation. 92 P.2d at 304. As there was no legislative exemption for city residents with respect to the special levy, the levy was not considered improper double taxation. Thus, the city residents were liable for the city's road levy, as well as the county-wide road levy. The Siegfried court stated that the requirement for uniform and just taxation is met when the rate of assessment and taxation is uniform and just throughout a taxing district. 92 P.2d at 304; see also Kucharski v. White, 247 N.E.2d 428 (Ill. 1969) ("The fact that there are levies by different public authorities having practically similar powers exercised within parts of the same territory does not in and of itself constitute lack of uniformity in taxation.").

The legislature has given local governments great flexibility with respect to apportionment of expenses and funding for support of library services. A county or a city may separately establish its own public library. Mont. Code Ann. § 22-1-303. To support a county library, the county may levy a special tax not to exceed 5 mills on all property in the county. To support the city library, the city may levy a tax not to exceed 7 mills on property in the city. Certainly, if Park County maintained a county library separate from the Livingston city library, there is no question that the statutory scheme allows property in the city to be taxed twice for provision of library services. See also City of Ormond Beach v. County of Volusia, 383 So. 2d 671 (Fla. 1980). This does not mean that the city *must* support both a county library and a city library. Montana Code Annotated § 22-1-313 expressly allows a city to become exempt from the county levy upon notification that the city no longer wishes to maintain the county library.

A city and county may also join, as you have, to establish and maintain a joint city-county library. No parameters, other than maximum mill levies, have been set by the legislature with respect to the funding of such a joint enterprise. The expenses of the joint city-county library are apportioned between the city and the county "on such a basis as shall be agreed upon" in the contract establishing the joint library. Mont. Code Ann. § 22-1-316(2). Most importantly, Mont. Code Ann. § 22-1-316(3) provides:

Montana Library Laws: Attorney General Opinions and Supreme Court Decisions

The governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

This provision expressly allows both the city and the county having entered into a joint city-county library agreement to levy a tax as provided in Mont. Code Ann. § 22-1-304. There is no statutory exemption from the county levy for property located in the city.

In short, I have found no authority which would prohibit the county from levying 2.5 mills upon property county-wide. This is not to say that the city must agree to such a provision in the new contract. The city has the option to run its own library under § 22-1-313 and be exempt from any county levy. Also, the city and the county have broad discretion in negotiating the apportionment of expenses and funding for provision of library services.

THEREFORE, IT IS MY OPINION:

A city and a county may enter into an agreement to operate a joint city-county library under which both the city and the county may levy taxes on property located in the city.

Sincerely,

JOSEPH P. MAZUREK Attorney General

jpm/elg/dm

## **48 Op. Att'y Gen. No. 3**

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1999 – opinion about authority of county commission over library budget when library is funded by a general fund levy.

Portions of this opinion may have been superseded by 54 Op. Att'y Gen. No. 7 which addresses local government authority over library budgets.

## 48 Op. Att'y Gen. No. 3

COUNTIES - Authority of board of library trustees to adopt county library budget and determine library staff compensation;

COUNTY COMMISSIONERS - Authority of county commissioners to modify library budget and determine library staff compensation;

LIBRARIES - Authority of board of library trustees;

TAXATION AND REVENUE - Obligation of county commissioners to fund county library;

MONTANA CODE ANNOTATED - Title 22, chapter 1, part 3; sections 7-6-2348(1), -2501, 22-1-304(1), (2), -308 to -310;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 98 (1988), 41 Op. Att'y Gen. No. 91 (1986).

HELD:

1. A board of county commissioners does not have the authority to modify the annual library budget submitted by the library trustees even if the library is funded by a general fund levy, except that the board of county commissioners may limit the amount of general fund tax revenue requested in the budget by the library trustees to that amount generated by a tax levy of five mills.

2. A board of county commissioners does not have the authority to modify the library trustees' decisions regarding library staff compensation even if the library is funded by a general fund levy.

May 4, 1999

Ms. Christine A. Cooke  
Big Horn County Attorney  
P.O. Box 908  
Hardin, MT 59034-0908

Dear Ms. Cooke:

You have requested my opinion concerning the following questions:

Where a county library is funded by a general fund levy under Mont. Code Ann. § 7-6-2501 and not under Mont. Code Ann. § 22-1-304(1), does the board of county commissioners have the authority to:

1. modify the annual budget submitted by the county library trustees?
2. modify the determination by the library trustees as to the amount of pay increases to library personnel?

Resolution of these issues requires a review of the statutes creating the Big Horn County Library (library) and the extent of statutory authority given to the board of library trustees in its governing of the library.

The library is a free public library established under Mont. Code Ann. title 22, chapter 1, part 3. As such, it is governed by a board of five appointed trustees. Mont. Code Ann. § 22-1-308; 41 Op. Att'y Gen. No. 91 (1986). The library trustees have a broad range of powers and duties. Mont. Code Ann. §§ 22-1-309, -310; 41 Op. Att'y Gen. No. 91 (1986); see also Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 24, 555 P.2d 507, 509 (1976). The trustees are given exclusive control of the expenditures of the public library fund, the construction or lease of library buildings, and the operation and care of the library. Mont. Code Ann. § 22-1-309. The trustees also have the duty to appoint and set the compensation for the chief librarian and, with the recommendation of the chief librarian, "shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties." Mont. Code Ann. § 22-1-310. Furthermore, § 22-1-309(9) provides that the library trustees shall "exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library."

## Montana Library Laws: Attorney General Opinions and Supreme Court Decisions

In addition, library trustees have exclusive control of a library's budget. 41 Op. Att'y Gen. No. 91 at 394-95; see also Mont. Code Ann. § 7-6-2348(1) (the proposed budget and the number of mills to be assessed by any appointed board, commission, or other government entity are subject to approval by the local governing body, except a board of trustees of a public library and an airport authority). Specifically, Mont. Code Ann. § 22-1-309(6) mandates that library trustees "prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds." The trustees must submit the budget to the county commissioners, § 22-1-309(6), and the county commissioners "may impose a property tax levy not to exceed five mills for the purpose of raising the funds required to maintain the library." 41 Op. Att'y Gen. No. 91 at 394, citing Mont. Code Ann. § 22-1-304(1). If the library is funded through the statutory special tax levy under § 22-1-304, the maximum five-mill levy amount may be exceeded only upon a majority vote of the qualified electors at the general election. See Mont. Code Ann. § 22-1-304(2)(a)-(d). When a county chooses to fund its library through the general fund levy a public vote is not necessary for the county to provide the library with funding in excess of five mills.

Previous Attorney General's Opinions have acknowledged the broad statutory powers and duties vested in a board of library trustees and the autonomy given to the trustees in governing the library. 42 Op. Att'y Gen. No. 98 (1988); 41 Op. Att'y Gen. No. 91(1986). In 41 Op. Att'y Gen. No. 91, Attorney General Greely considered whether a board of county commissioners could: (1) override a decision by library trustees to grant pay increases to library personnel; (2) modify the annual budget submitted by the library trustees even though it did not exceed the five-mill limit; and (3) refuse to levy any millage for the funding of the library. Attorney General Greely rejected the proposition that a board of county commissioners could override the decision of library trustees regarding pay increases. Relying on the broad statutory powers and duties given library trustees under § 22-1-310, Attorney General Greely concluded that the trustees' express authority to fix compensation for library employees prohibits a board of county commissioners from establishing a different wage level. 41 Op. Att'y Gen. No. 91 at 395.

Attorney General Greely also concluded that a board of county commissioners has no authority to modify the budget submitted by library trustees, explaining:

The trustees' power under section 22-1-309(6), MCA, to adopt an annual budget forecloses the board of county commissioners from effecting changes in such budget. The obvious purpose of the trustees' authority in library budget matters is to allow application of their informed judgment to fiscal issues. Such authority is, moreover, an integral aspect of the trustees' independence without which many of their other express powers would be rendered meaningless. The board of county commissioners' only role in library budget matters is to assign a property tax levy amount, which presently cannot exceed five mills, sufficient to satisfy the budgetary needs. The commissioners' function is thus purely ministerial with respect to the imposition of the levy.

Id. Finally, Attorney General Greely concluded that a board of county commissioners did not have the authority within the statutory five-mill limit to refuse to levy some or all of the property taxes necessary to satisfy the library budget prepared by the trustees. Id. at 395-96.

The broad powers and duties of library trustees were also discussed in 42 Op. Att'y Gen. No. 98 (1988), which held that a city commission did not have authority to overrule a decision by city library trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs. Relying on 41 Op. Att'y Gen. No. 91, Attorney General Greely stated, "Insofar as the library trustees have been given explicit authority under the Library Systems Act, their determinations may not be subjected to plenary review and possible modification by the city commission." 42 Op. Att'y Gen. No. 98 at 381.

You have stated that the library is not financed through the five-mill levy under § 22-1-304(1), but rather through the county general fund which is funded by the mill levy under Mont. Code Ann. § 7-6-2501. Last year, the county commissioners provided the library with approximately nine mills for its budget. You believe that because the library is funded through the general fund rather than § 22-1-304, the final authority to decide the library's budget and possible pay increases for library staff no longer rests with the library trustees but with the county commissioners. I conclude otherwise.

## Montana Library Laws: Attorney General Opinions and Supreme Court Decisions

Big Horn County's funding of the library through the general fund does not allow county commissioners to usurp the library trustees' statutory authority in setting the library's budget and compensation for the library staff. In enacting the statutes regarding free public libraries, the legislature clearly intended that library trustees be given independent power to manage and operate libraries without the threat of being censored by a city or county government. See Mont. Code Ann. §§ 22-1-309, -310; 41 Op. Atty Gen. No. 91 at 394-95. To hold that a board of county commissioners could usurp the library trustees' express statutory authority by simply funding the library's budget through the general fund would defeat the very purpose of free public libraries and render meaningless §§ 22-1-301 to -317. Accordingly, if the county commissioners fund the library's budget through the general fund, the power to decide the budget and library staff compensation still rests with the library trustees as set forth in Mont. Code Ann. §§ 22-1-309 and -310.

Although the county commissioners cannot modify specific parts of the budget adopted by library trustees if the library's budget is funded through the general fund, the commissioners may limit the overall funding of the budget to five mills as if it were being funded pursuant to tax levy under Mont. Code Ann. § 22-1-304. To find otherwise would allow library trustees to adopt a budget that could assume the entire general fund levy. Moreover, in enacting § 22-1-304, the legislature only intended, absent a vote pursuant to § 22-1-304(2), that a county governing body be responsible for funding a library at a five-mill levy amount. To disregard that five-mill limit simply because the library is funded through the general fund would ignore the clear intent of the legislature. Many counties, such as Big Horn County, currently fund their libraries at an amount greater than five mills, and this opinion should in no way be construed to prohibit or discourage that worthy practice.

THEREFORE, IT IS MY OPINION:

1. A board of county commissioners does not have the authority to modify the annual library budget submitted by the library trustees even if the library is funded by a general fund levy, except that the board of county commissioners may limit the amount of general fund tax revenue requested in the budget by the library trustees to that amount generated by a tax levy of five mills.
2. A board of county commissioners does not have the authority to modify the library trustees' decisions regarding library staff compensation even if the library is funded by a general fund levy.

Sincerely,

JOSEPH P. MAZUREK  
Attorney General

jpm/msw/mlr



## **49 Op. Att’y Gen. No. 16**

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2002 – opinion about general obligations to fund library budget and ability of counties to enter into interlocal agreements.

Portions of this opinion may have been superseded by 54 Op. Att’y Gen. No. 7 which addresses local government authority over library budgets.

VOLUME NO. 49

OPINION NO. 16

COUNTIES - Authority of board of library trustees to adopt county library budget;  
COUNTIES - Effect of repeal of numerical mill levy caps on commissioners' authority with respect to county library budget;  
COUNTY COMMISSIONERS - Effect of repeal of numerical mill levy caps on commissioners' authority with respect to county library budget;  
INTERLOCAL AGREEMENTS - Agreement between county and school district for operation of county library may include provision binding commissioners to fund budget at specified level;  
LIBRARIES - Authority of board of library trustees to adopt county library budget;  
MONTANA CODE ANNOTATED - Title 7, chapter 11, part 1; sections 22-1-304, -309(1), 15-10-420;  
MONTANA LAWS OF 2001 - Chapter 574;  
OPINIONS OF THE ATTORNEY GENERAL - 49 Op. Att'y Gen. No. 5 (2001), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD: 1. The county commissioners are generally obligated to fund the library budget submitted by the library board within the limits set by Mont. Code Ann. § 15-10-420.
2. The county has the power to enter an interlocal agreement under which it could bind itself to fund the library budget as submitted by the library board under Mont. Code Ann. § 22-1-309(1).

January 18, 2002

Mr. John T. Flynn  
Broadwater County Attorney  
P.O. Box 96  
Townsend, MT 59644-0096

Dear Mr. Flynn:

You have requested my opinion on the following question:

Does the library board have the power to require the county commissioners to levy five mills in support of the county library?

Prior to the 2001 legislative session, this question was answered by 48 Op. Att'y Gen. No. 3 (1999), in which Attorney General Mazurek held that the county commissioners were obligated to fund the library budget at the amount set by the library board, up to

the amount that would be raised by a property tax of five mills. However, in 2001 the legislature made significant changes in the laws relating to local government budget and taxation, and these changes require a reexamination of the prior opinions in this area.

In 1986 the Montana voters adopted Initiative Measure 105, which capped the property taxes that could be assessed against real property at the amounts assessed in 1986. I-105 proved difficult to administer, and as the years passed its provisions were amended several times, culminating in the adoption by the 2001 legislature of chapter 574 of the 2001 Montana Laws.

In 49 Op. Att’y Gen. No. 5 (2001), the Attorney General discussed the statutory changes adopted by the 2001 legislature in the area of local government taxation. Chapter 574 made substantial changes that are described in detail in the opinion. In brief, those changes eliminated most of the numeric mill levy limitations for specific government purposes that existed previously. With reference to your request, the legislature amended Mont. Code Ann. § 22-1-304 to delete the former reference to a five-mill levy. As amended, the statute simply authorizes the county to levy mills for support of the library.

In place of the numeric mill levies, Mont. Code Ann. § 15-10-420, as amended by 2001 Mont. Laws, ch. 574, allows the county to levy sufficient mills to raise the amount of property tax raised in the previous year, subject to certain adjustments not pertinent here. Since the five-mill library levy has been eliminated, there is no longer a statutory basis to argue that the library board has the authority to require the commissioners to levy five mills for support of the library budget.

However, in 41 Op. Att’y Gen. No. 91 (1986), Attorney General Greely held that Mont. Code Ann. § 22-1-309(1) authorizes the library board to determine the budgetary needs of the library, and that the county commissioners lacked the power to modify the budget presented by the library board. In 48 Op. Att’y Gen. No. 3 (1999), Attorney General Mazurek reaffirmed Attorney General Greely’s holding, but modified it to hold that the library board could not compel the commissioners to expend more than the amount raised by five mills.

In my opinion, the 2001 statutory changes adopted in 2001 Mont. Laws, ch. 574, did not delete the library board’s authority to determine the amount of financial support required by the library, nor did they confer on the county commissioners the authority to modify the library budget submitted by the library board. The prior opinions cited above found that the library board was granted budget authority by statute under Mont. Code Ann. § 22-1-309(1), and the deletion of the five-mill levy does not alter the library board’s budget authority.

While these statutes are not ambiguous in light of the prior interpretations of this office, I also note that the legislative history of the 2001 act suggests that the legislature did not intend to alter the relationship between the library board, and similar boards with budget authority, and the county commissioners with respect to budget matters. See Mins., Sen. Comm. on Local Gov't, Jan. 16, 2001, at 8 (testimony of Harold Blattie) (“The bill does not remove the authority of the local trustees of the water control district, cemetery district, etc. to determine what their mill levies are as long as they are compliant with 15-10-420.”); Mins., Local Gov't Funding Select Comm., Feb. 6, 2001 (“Rep. Story mentioned that library and airport board budgets were eliminated from HB 124. Gordon Morris said they wanted to operate under present law.”)

It is therefore my opinion that chapter 574 of the Laws of Montana, 2001, did not give the board of county commissioners the authority to modify the budget submitted by the library board pursuant to Mont. Code Ann. § 22-1-309(1), provided that budget fits within the provisions of Mont. Code Ann. § 15-10-420. As discussed above, that statute, as amended in 2001, limits the county to the number of mills required to raise the amount of money raised in the previous fiscal year, subject to statutory adjustments. Under the reasoning of 48 Op. Att’y Gen. No. 3 (1999), the budget which the library board may require the commissioners to adopt is limited to the amount budgeted in the prior year as adjusted pursuant to section 15-10-420.

While the above discussion describes the governing law, your situation may be affected by the interlocal agreement between Broadwater County and the Townsend School District. Broadwater County and the Townsend School District have entered an agreement under which they share fiscal responsibility for the county library. The School District has agreed to house the library and “provide funds for the general operation of the library.” Interlocal Agreement, Part III.B.2. The County agreed to “provide the approved level of funding for the general operation of the library as well as for a materials budget to meet the non-school needs of the population,” and to “[l]evy the maximum number of mills allowed by law for support of the public library.”

The Interlocal Cooperation Act, Mont. Code Ann. tit. 7, ch. 11, pt. 1, specifically allows a county to appropriate funds for the purpose of supporting an interlocal agreement. In this case, Broadwater County has agreed to “provide the approved level of funding” for the library, and to “[l]evy the maximum number of mills allowed by law for support of the public library.” Interlocal Agreement, Part III.C.1., 2. Nothing in the 2001 tax and budget amendments would prevent Broadwater County from voluntarily entering an interlocal agreement providing that it would accept the library board’s budget proposal and levy the necessary mills to fund it.

I am unable to issue an opinion as to whether the interlocal agreement between Broadwater County and the Townsend School District binds the county to fund the

entire amount of the budget submitted by the library board. The language in the agreement is not entirely clear, and issues of fact may exist as to the prior interpretation of the agreement by the parties and their intention in entering the contract. An opinion from this office is not an appropriate vehicle for resolving such factual questions. I would suggest that in light of the statutory changes outlined above, the parties to the agreement should renegotiate its provisions and agree to changes that better fit the statutes as amended.

THEREFORE, IT IS MY OPINION:

1. The county commissioners are generally obligated to fund the library budget submitted by the library board within the limits set by Mont. Code Ann. § 15-10-420.
2. The county has the power to enter an interlocal agreement under which it could bind itself to fund the library budget as submitted by the library board under Mont. Code Ann. § 22-1-309(1).

Very truly yours,

MIKE McGRATH  
Attorney General

mm/cdt/dm

## **53 Op. Att’y Gen. No. 2**

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2009 – opinion about hospital district budgets and similarities/differences to independent public library districts.

VOLUME 53

OPINION NO. 2

COUNTIES - Budget authority with respect to hospital districts;

COUNTIES - Budget powers in light of Mont. Code Ann. §§ 15-10-420, 7-6-4035 and -4036;

HEALTH CARE FACILITIES - Authority of county commission with respect to hospital district budget;

HOSPITAL DISTRICTS - Authority of county commission with respect to hospital district budget;

LOCAL GOVERNMENT - County budget powers in light of Mont. Code Ann. §§ 15-10-420, 7-6-4035 and -4036;

STATUTORY CONSTRUCTION - Construction of related statutes to give effect to all;

STATUTORY CONSTRUCTION - Effect of later adopted statute on earlier statutes dealing with same subject;

STATUTORY CONSTRUCTION - Presumption that legislation is intended to change existing law;

MONTANA CODE ANNOTATED - Sections 2-9-316, 7-6-2527, -4001, -4015, -4035, -4036, 7-34-2131, -2132, -2133, 15-10-402, -420, (1)(a), (b), -425, 22-1-304, 67-10-402(1);

MONTANA LAWS OF 2001 - Chapters 278, 574, section 84;

OPINIONS OF THE ATTORNEY GENERAL - 49 Op. Att’y Gen. No. 16 (2001), 49 Op. Att’y Gen. No. 5 (2001), 48 Op. Att’y Gen. No. 3 (1999), 41 Op. Att’y Gen. No. 91 (1986).

- HELD:
1. Subject to Mont. Code Ann. § 15-10-420, a board of county commissioners may levy mills to support a county hospital district, even if the district is newly created and no mills have previously been levied for district purposes.
  2. For purposes of applying Mont. Code Ann. § 15-10-420 to a mill levy for a county hospital district under Mont. Code Ann. § 7-34-2133, the “governmental entity” levying the tax is the county, not the district.
  3. Under Mont. Code Ann. § 15-10-420, county property taxes are limited by the number of mills required to raise the same amount of tax revenue as was raised in the immediately previous year,

increased by (a) one-half of the average rate of inflation for the previous year, and (b) by any mills carried over from the previous year under Mont. Code Ann. § 15-10-420(1)(b). The amount of tax revenue raised in 1996, as provided in Mont. Code Ann. § 15-10-420, is no longer the limiting factor.

4. The Commissioners may provide funding for a hospital district from the general mill levy or from (a) mills levied under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County under Mont. Code Ann. § 7-1-2133 and for all other purposes covered by § 420 stays within the cap provided by § 420; (b) from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425; or (c) from bonds sold pursuant to Mont. Code Ann. § 7-34-2131 to defray the cost of “acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.”
5. Montana Code Annotated § 7-34-2133 does not obligate the county to fund the budget proposed by the county hospital district trustees without change.

July 30, 2009

Granite County Board of Commissioners  
P.O. Box 925  
Philipsburg, MT 59858-0925

Dear Commissioners:

**[P1]** You have requested my opinion regarding the funding of the newly created Granite County Hospital District. I have identified the issues presented as follows:

1. May a newly created hospital district levy mills to support its budget under the provisions of Mont. Code Ann. § 7-34-2133 where it has not previously levied mills?



2. How do Mont. Code Ann. § 15-10-420, as amended in 2001, and other statutory amendments enacted in 2001, affect the county mill levy for hospital purposes?

Your letter informs me that the voters of Granite County have approved the creation of a new hospital district and have elected the Trustees of the district. Since the district is new entity, the County has not previously levied mills or budgeted funds needed to operate the district.

**[P2]** In 2001, the Montana legislature made several changes in the funding of local government services. The most sweeping of these changes is found in 2001 Mont. Laws, ch. 574. Prior to 2001, Mont. Code Ann. § 15-10-420 (“§ 420”) provided a complex process to limit local government tax revenues, taking into account the existence of numerous statutes that provide for special mill levies in specified amounts tied to specific purposes, as Mont. Code Ann. § 7-34-2133 does for hospital districts. The 2001 amendments to § 420 scrapped the existing process and replaced it with a mill levy cap. The cap encompasses almost all local government mill levies, including special levies, and limits the local government’s mill levies for almost all purposes to the number of mills needed to provide the same revenue as was raised in the prior year, indexed for inflation. The amended § 420 also allows a local government to carry mills forward to a subsequent year when the entire amount of revenue that might be raised under the cap has not been raised.

**[P3]** The same bill amended a large number of special mill levy statutes in two basic ways. These amendments eliminated numerical mill levy caps found in the special levy statutes. Section 84 of the bill amended Mont. Code Ann. § 7-34-2133 to eliminate the three mill limit for hospital districts. It also modified all of the special levy statutes, including Mont. Code Ann. § 7-34-2133, to make clear that all of the special levies were “subject to 15-10-420.”

#### I.

**[P4]** In 49 Op. Att’y Gen. No. 5 (2001), Attorney General McGrath answered several questions posed by the City of Great Falls under § 420 relating to the city airport. One of the issues presented was whether the limit on mills was calculated by reference to specific programs for which the legislature had provided levy authority, or by reference to the total number of mills levied by the city for all purposes.

[P5] In response to that question, Attorney General McGrath held that § 420 limited the total number of mills levied by a local government, regardless of the purpose for which it levies the mills. He stated:

In calculating the City's mill levy for this year, it does not matter whether the City levied two mills, or for that matter any mills, for airport purposes under Mont. Code Ann. § 67-10-402(1) in any prior year. **Under [§ 420], the City is authorized to levy a property tax for the airport, and as long as the City's total property tax collections covered by the mill levy cap in Mont. Code Ann. § 15-10-420(1)(a) do not exceed those assessed in the prior year, the airport levy is permissible. It is simply not relevant under this statutory scheme whether the City levied a tax under [the airport special tax levy statute] in any prior year.**

(Emphasis added.) The ability of the county to levy mills for the hospital district therefore is not affected by the fact that the district is new or by the fact that no mills have been levied for the district in past years. Since the taxing authority in § 7-34-2133 is “subject to 15-10-420,” it cannot be argued that the hospital levy is exempt from the mill levy limits.

## II.

[P6] Under § 420, the “governmental entity” for purposes of calculating the mill limit is the commission, not the hospital district. Montana Code Annotated § 7-34-2133 requires “the board of county commissioners” to levy the tax, not the hospital district board, just as the tax levy for the Great Falls airport was levied by the city commission, not by the airport board.

## III.

[P7] Moreover, under the 2001 amendment to section 420, the amount of taxes levied in 1996 is no longer a limiting factor. The 2001 amendment to section 420 specifically modified the reference to 1996 in Mont. Code Ann. § 15-10-402. As amended, § 420 provides that the limiting factor is now the tax revenue generated in the prior year, not in 1996. The Board of Commissioners may levy the maximum mills allowed by § 420.

[P8] Accordingly, there are several options by which a Board of Commissioners may fund a hospital district. If a hospital district exists or is created, the Commissioners may provide funding from the general mill levy. They may also levy mills under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County for the

hospital and for all other purposes covered by § 420 stays within the cap provided by § 420. The county may also provide funding for the hospital from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425. Finally, Mont. Code Ann. § 7-34-2131 allows a hospital district to issue bonds to defray the cost of “acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.”

#### IV.

[P9] One other point deserves mention. Montana Code Annotated § 7-34-2132 requires the hospital trustees to present the county commission a budget and to “certify the amount necessary and proper for the ensuing year.” Montana Code Annotated § 7-34-2133 then provides that the commissioners “shall, annually at the time of levying county taxes, fix and levy a tax on the taxable value of all taxable property within the hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.” In light of the budget statutes adopted in 2001, an argument that this language obligates the Granite County Commissioners to fund the district Trustees’ proposed budget without change cannot be accepted.

[P10] First, that conclusion produces an absurd result. It would allow the hospital district board to prevent the local governing board from addressing other important governmental responsibilities. Since the county commission is responsible for the provision of numerous public services specified by law, see Mont. Code Ann. § 7-6-2527 (enumerating nonexclusive list of permissible county expenditure of property tax revenue), the legislature cannot have intended to make hospitals a superior priority that could consume so much of the county budget that other needs would go unfunded. Compare Skinner Enters. v. Lewis & Clark County Bd. of Health, 286 Mont. 256, 271, 950 P.2d 733, 742) (1997) (construing statutes together avoids absurd results).

[P11] Second, other actions of the 2001 legislature suggest that the overall intention of the legislature was to vest the local government with the authority to approve the budgets of local boards and commissions. 2001 Mont. Laws, ch. 278, enacted provisions that have been codified at Mont. Code Ann. §§ 7-6-4035 and -4036. Section 7-6-4035 provides, in pertinent part: “The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.” Section 7-6-4036 provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after the approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-

4034. . . . Each levy . . . except for a judgment levy under 2-9-316 or 7-6-4015, is subject to 15-10-420.

The legislature made these provisions part of the “Local Government Budget Act.” Mont. Code Ann. § 7-6-4001.

[P12] Making the “proposed budget” of the hospital district subject to “approval” by the Commissioners, as Mont. Code Ann. § 7-6-4035 requires, would be meaningless if the Hospital Board could nevertheless compel the Commissioners to approve its budget proposal intact. It is presumed that the legislature does not intend to require meaningless acts, Peris v. Safeco Ins., 276 Mont. 486, 492, 916 P.2d 780, 784 (1996) (“This Court presumes that the legislature does not pass meaningless legislation.”), and that a legislative enactment is intended to change existing law, Cantwell v. Geiger, 228 Mont. 330, 333, 742 P.2d 468, 471 (1987) (“In construing a statute, this Court presumes that the legislature intended to make some change in existing law by passing it.”).

[P13] The net effect of the 2001 local government budget enactments is to ensure that local governing bodies have sufficient flexibility to provide necessary services within a balanced and limited budget. The conclusion that the county commissioners would be required to accept and budget for the proposed budgets of a hospital district is inconsistent with the flexibility provided by § 420 and the broad budget authority provided in the Local Government Budget Act.

[P14] The guidelines for the construction of statutes recognize that all statutes relating to a particular subject are to be read together in a way that gives effect to all, City of Billings v. Panasuk, 253 Mont. 403, 406, 833 P.2d 1050, 1052 (1992), and that the meaning of earlier statutes may be affected by later-adopted statutes dealing with the same subject matter, see State v. Marchindo, 65 Mont. 431, 443, 211 P. 1093, 1097 (1922) (“It is the rule of construction that, where a new remedy or mode of procedure is authorized by a new statute, and the new procedure is inconsistent with the former one, the latest expression of legislative will must govern; however, to the extent only as provided in the new Act.”) These principles apply to the construction of Mont. Code Ann. § 7-34-2133 in light of the later adopted provisions of Mont. Code Ann. §§ 7-6-4035 and -4036.

[P15] In my opinion, the best way to provide meaning and effect to all of these statutes is to construe the later-adopted provisions of §§ 7-6-4035 and 7-6-4036 to control the interpretation of § 7-34-2133 and negate an interpretation that would require the county commissioners to rubber-stamp the proposed budgets of hospital districts. Under the

2001 statutes, the Commissioners have the authority to review and adjust the budgets proposed by hospital district trustees.

**[P16]** I am aware that other opinions of this office have held that a local governing body is obligated to fund the budget of a public library as proposed by the library trustees without change. 49 Op. Att’y Gen. No. 16 (2001); 48 Op. Att’y Gen. No. 3 (1999); 41 Op. Att’y Gen. No. 91 (1986). The soundness of the holdings in these opinions is an issue not squarely presented by your request. For that reason, I express no opinion here regarding the effect of the 2001 amendments to the local government budget laws to the funding of a public library, leaving those questions for consideration when this office receives a request that presents those issues for review.

**THEREFORE IT IS MY OPINION:**

1. Subject to Mont. Code Ann. § 15-10-420, a board of county commissioners may levy mills to support a county hospital district, even if the district is newly created and no mills have previously been levied for district purposes.
2. For purposes of applying Mont. Code Ann. § 15-10-420 to a mill levy for a county hospital district under Mont. Code Ann. § 7-34-2133, the “governmental entity” levying the tax is the county, not the district.
3. Under Mont. Code Ann. § 15-10-420, county property taxes are limited by the number of mills required to raise the same amount of tax revenue as was raised in the immediately previous year, increased by (a) one-half of the average rate of inflation for the previous year, and (b) by any mills carried over from the previous year under Mont. Code Ann. § 15-10-420(1)(b). The amount of tax revenue raised in 1996, as provided in Mont. Code Ann. § 15-10-420, is no longer the limiting factor.
4. The Commissioners may provide funding for a hospital district from the general mill levy or from (a) mills levied under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County under Mont. Code Ann. § 7-1-2133 and for all other purposes covered by § 420 stays within the cap provided by § 420; (b) from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425; or (c) from bonds sold pursuant to Mont. Code Ann. § 7-34-2131 to defray the cost of “acquisition, furnishing, equipment, improvement, extension, and

betterment of hospital facilities and to provide an adequate working capital for a new hospital.”

5. Montana Code Annotated § 7-34-2133 does not obligate the county to fund the budget proposed by the county hospital district trustees without change.

Sincerely,

STEVE BULLOCK  
Attorney General

sb/cdt/jym

## **53 Op. Att’y Gen. No. 5**

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2010 – opinion about exempting city property from a county library levy when there is an independent city library

VOLUME 53

OPINION NO. 5

**CITIES AND TOWNS** - A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;

**COUNTIES** - A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;

**LIBRARIES** - A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;

**LOCAL GOVERNMENT** - The powers of local governments are to be liberally construed;

**STATUTORY CONSTRUCTION** - In interpreting a statute, I look first to its plain language. Language that is clear and unambiguous requires no further interpretation;

**TAXATION AND REVENUE** - A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;

**MONTANA CODE ANNOTATED** - Sections 22-1-303, -313, 33-1-301(3);

**MONTANA CONSTITUTION OF 1972** - Article XI, sections 4(2), 6;

**OPINIONS OF THE ATTORNEY GENERAL** - 47 Op. Att’y Gen. No. 6 (1997).

- HELD:**
1. Taxable property within an incorporated city may become exempt from a county library levy under Mont. Code Ann. § 22-1-313 only when (1) the city has “an existing tax-supported public library,” as the term “public library” is defined in Mont. Code Ann. § 33-1-301(3), actually in existence and (2) the city governing body notifies the county of its desire not to be part of the county library system.
  2. Where the city and county have entered an interlocal agreement in which the city provides a building and other services for a branch of the county library but has not created an independent city library, withdrawal from the interlocal agreement, by itself, does not allow the city to act under Mont. Code Ann. § 22-1-313 to exempt city property from the county library tax levy.



Ms. Mary VanBuskirk

October 18, 2010

Page 2

3. A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy.

October 18, 2010

Ms. Mary VanBuskirk  
Whitefish City Attorney  
P.O. Box 158  
Whitefish, MT 59937-0158

Dear Ms. VanBuskirk:

**[P1]** Your predecessor requested my opinion as to the following rephrased questions:

1. If the City of Whitefish withdraws from the Interlocal Agreement with the Flathead County Library, and thereby takes back the library building located in Whitefish, will real property within the City be exempt from the County’s mill levy for library services pursuant to Mont. Code Ann. § 22-1-313?
2. May the City of Whitefish create “an existing tax-supported public library” after withdrawing from the Interlocal Agreement, and thereby satisfy the requirements of Mont. Code Ann. § 22-1-313?

**[P2]** There is currently a branch of the Flathead County Library (“County Library”) in the City of Whitefish (“Whitefish”). The property owners of Whitefish, like all property owners within the county, are assessed property taxes via a county mill levy for support of the library system. The Whitefish branch is housed in a building that is owned by Whitefish, and Whitefish allows the County Library to use the building as a branch of the county library system pursuant to an Interlocal Agreement (“Agreement”). Whitefish is now considering a request from the community seeking to end the Agreement and run Whitefish’s own independent city library. As part of the proposal, Whitefish would seek to exempt the property in the city from the County’s library mill levy pursuant to Mont. Code Ann. § 22-1-313, which provides:

After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public

Ms. Mary VanBuskirk

October 18, 2010

Page 3

library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

[P3] In interpreting a statute, I look first to its plain language. Language that is clear and unambiguous requires no further interpretation. Gannett Satellite Info. Network v. State, 2009 MT 5, ¶ 20, 348 Mont. 333, 201 P.3d 132.

[P4] The language of Mont. Code Ann. § 22-1-313 is clear and unambiguous. If, after the establishment of a county library, a city desires to exempt the property in the city from the county library mill levy, it must: (1) have “an existing tax-supported public library;” and (2) notify the county that the city does not desire to be a part of the county library system.

[P5] The only “existing tax-supported public library” in Whitefish at this time is a branch of the county library. If the city terminates the Agreement, that library will cease to function, but no “existing tax-supported” city library will thereby spring into existence. In other words, the city must have an independent library that it has created pursuant to statute before it can seek to exempt the property within city limits from the county tax levy. The building housing the Whitefish branch is owned by the city. However, it is considered by all parties to currently be a branch of the county library, and therefore cannot be considered “an existing tax-supported public library” of the city.

[P6] This holding does not conflict with former Attorney General Mazurek’s opinion in 47 Op. Att’y Gen. No. 6 (1997). The question presented in that opinion was whether a city and a county could both levy taxes on property within the city to operate a joint city-county library. While answering that question, Attorney General Mazurek noted that “Montana Code Annotated § 22-1-313 expressly allows a city to become exempt from the county levy upon notification that the city no longer wishes to maintain the county library.” Id. However, he later more fully explained that “the city has the option to run its own library under § 22-1-313 and be exempt from any county levy.” Id. (emphasis added). Before being entitled to the exemption, then, the city must “run its own library.”

[P7] Once Whitefish has withdrawn from the Agreement and taken back the building, it can create a public library pursuant to Mont. Code Ann. § 22-1-303, provide funding to the library through the city’s tax revenues, and operate a public library out of the existing building. Once the city library is up and running on city tax funds, the city would have “an existing tax-supported public library.” Upon notification to the county, property

Ms. Mary VanBuskirk

October 18, 2010

Page 4

within the city limits would be exempt from the county library mill levy pursuant to Mont. Code Ann. § 22-1-313.

[P8] The Flathead County Attorney has suggested that Mont. Code Ann. § 22-1-313 only allows a city to exempt its property from the county library tax levy if the city has a tax-supported library in existence when the county library is formed. I disagree. The powers of local governments are to be liberally construed. Mont. Const. art. XI, §§ 4(2), 6. Montana Code Annotated § 22-1-313 does not clearly require that the city library predate the county library and, given the directive of the Montana Constitution, I decline to insert such a requirement in the statute.

THEREFORE, IT IS MY OPINION:

1. Taxable property within an incorporated city may become exempt from a county library levy under Mont. Code Ann. § 22-1-313 only when (1) the city has “an existing tax-supported public library,” as the term “public library” is defined in Mont. Code Ann. § 33-1-301(3), actually in existence and (2) the city governing body notifies the county of its desire not to be part of the county library system.
2. Where the city and county have entered an interlocal agreement in which the city provides a building and other services for a branch of the county library but has not created an independent city library, withdrawal from the interlocal agreement, by itself, does not allow the city to act under Mont. Code Ann. § 22-1-313 to exempt city property from the county library tax levy.
3. A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy.

Sincerely,

STEVE BULLOCK  
Attorney General

sb/jss/jym

## **54 Op. Att'y Gen. No. 7**

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2012 – opinion about local governing body authority over library mill levies and library budget. This opinion supersedes previous Attorney General opinions about library board authority when it comes to the library's overall budget.

**ATTORNEY GENERAL**  
**STATE OF MONTANA**

Steve Bullock  
Attorney General



Department of Justice  
215 North Sanders  
PO Box 201401  
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VOLUME NO. 54

OPINION NO. 7

LIBRARIES - The Library Board has sole discretion to determine how to use unspent funds in the library reserve;

LOCAL GOVERNMENT - The Library Board does not have the authority to require the local governing body to levy a certain number of mills in support of the library;

LOCAL GOVERNMENT - The local governing body is not required to continue levying a particular number of mills in perpetuity;

MONTANA CODE ANNOTATED - Sections 7-6-2501, -4001, -4431(3), -4035, -4036, (1)(b), (c), 15-10-420, (1)(b), 22-1-301, -304, (1), (3), (4), -308, -309, (6), -310;

MONTANA CODE ANNOTATED (1999) - Section 22-1-304;

OPINIONS OF THE ATTORNEY GENERAL - 53 Op. Att'y Gen. No. 2 (2009), 49 Op. Att'y Gen. No. 16 (2002), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD:
1. While the City and County have the inherent discretion not to levy mills, Mont. Code Ann. § 22-1-309 clearly provides that the Library Board alone has the discretion to determine how to use unspent funds in the library reserve.
  2. A library board no longer has sole discretion in determining the number of mills that must be levied for support of the library because Mont. Code Ann. § 7-6-4035 clearly provides that the proposed budget and mill levy for each board is subject to approval by the local governing body. Therefore the Library Board cannot require the City or County to levy a certain number of mills in support of the library.
  3. Because the City and County have discretion to determine the number of mills necessary, they do not have to levy a particular number of mills in perpetuity.

June 1, 2012

Mr. Bruce Becker

June 1, 2012

Page 2

Mr. Bruce Becker

Livingston City Attorney

414 East Callender

Livingston, MT 59047

Dear Mr. Becker:

[P1] You have requested my opinion concerning several questions which I have rephrased as follows:

1. Where unspent appropriations are available, can these funds be used to reduce the tax levy, i.e., can a local governing body appropriate unspent monies (reserves) from the prior fiscal year to partially fund the Livingston/Park County library's budget request for a future fiscal year?
2. Can the Library Board require the City or County to levy an inflationary floating mill?
3. If the City or the County can be required by the Library Board to levy a particular millage, is this not an unconstitutional delegation of the legislative power to tax to the appointed Library Board?
4. Once the City of Livingston has levied a certain number of mills for the library, must the City levy that same number of mills in perpetuity, or does it have the discretion to eliminate mills in excess of those required by the interlocal agreement with Park County?

[P2] Your letter indicates that in 2001 the City of Livingston (City) and Park County (County) entered an interlocal agreement to fund a library. Although in 2001 the legislature eliminated the mill limits found in Mont. Code Ann. § 22-1-304 (1999), the interlocal agreement continued to use limitations found in the previous version of the statute, which were five mills in the county and seven in the city. Thus, in the interlocal agreement the County agreed to levy five mills, with 2.5 of those being voter-approved on all property in the County, including property in the City. The City agreed to levy seven mills. The agreement also provided that both the City and County would levy additional mills for the annual increase provided for in Mont. Code Ann. § 15-10-420. Accordingly, last fiscal year, the City levied 9.23 mills, not including the 2.5 county mills. The County levied 5.7 mills, which included the annual increase provided for in Mont. Code Ann. § 15-10-420. Of the 9.23 City mills, 7.92 represent the original 7 mill

Mr. Bruce Becker

June 1, 2012

Page 3

levy and the annual increases under Mont. Code Ann. § 15-10-420. The remaining 1.31 mills are in excess of the terms of the interlocal agreement.

[P3] Your letter further indicates that the interlocal agreement is currently under review. A proposal to change the agreement calls for the County to assess five mills--7 mills less than currently levied by the County--and the City to assess seven mills--2.3 mills less than assessed in Fiscal Year 2011-2012. Because, as you acknowledge, this would result in less tax revenue, the City is proposing to reappropriate existing unspent funds in the library reserves to meet the library's budget needs.

[P4] The Library Board objects to this proposal because it would cut the library's annual funding by \$50,000, or 12.5 percent, and would eliminate funding to cover the cost of inflation. The Library Board argues that it is the sole duty of the Library Board to establish the library's budget needs, pursuant to Mont. Code Ann. § 22-1-309(6), which provides:

The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(6) *prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.*

(Emphasis added.)

[P5] The Library Board also relies on this office's holding in 41 Op. Att'y Gen. No. 91 (1986), which concluded, "A board of county commissioners does not have the authority to refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by county library trustees." The Library Board also notes that opinions from this office in 1999 and 2002 further confirm that it is the exclusive duty of the Library Board to determine the library budget and set the necessary mill levies to meet that budget, provided it falls within the parameters of Mont. Code Ann. § 15-10-420.

[P6] In 48 Op. Att'y Gen. No. 3 (1999), this office considered the authority of a board of county commissioners to alter a library board's proposed budget where the library is funded under a *general* levy, as opposed to the library-specific levy provided for in Mont.

Code Ann. § 22-1-304(1). In noting the expansive authority provided to library board trustees to control library expenditures and set the library budget, this office concluded that the county commission did not have statutory authority to modify the library budget, regardless of the fact that the library was funded through a general levy.

[P7] Similarly, in 49 Op. Att’y Gen. No. 16 (2002), this office considered whether the library board had the authority to require the county commission to levy a specific number of mills to fund the library budget as submitted by the library board. Although noting some changes had been made to the statutory scheme during the 2001 legislative session with the passage of the Local Government Budget Act (see Mont. Code Ann. § 7-6-4001), this office nonetheless concluded that the county commissioners were still “generally obligated” to fund the library board’s budget, subject only to the limitations provided for in Mont. Code Ann. § 15-10-420.

[P8] By 2009, however, in 53 Op. Att’y Gen. No. 2, I examined the changes enacted by the Local Government Budget Act more directly, specifically by considering whether a county governing body was required to adopt the hospital trustees’ proposed budget without changes. There I reached a result that appeared to conflict with the conclusion reached in 49 Op. Att’y Gen. No. 16 (2002). Specifically, I determined that the local governing body was *not* obligated “to fund the budget proposed by the county hospital district trustees without change.” My conclusion was based on the changes made to the statutory scheme by the Local Government Budget Act. It was also based on the acknowledgment that requiring a local governing body to simply adopt a local board’s proposed budget would usurp the governing body’s ability to set funding priorities for *all* government programs and would make the local board’s budget, in effect, a “superior priority” at the expense of other important government functions.

[P9] Furthermore, I noted:

I am aware that other opinions of this office have held that a local governing body is obligated to fund the budget of a public library as proposed by the library trustees without change. 49 Op. Att’y Gen. No. 16 (2001) [The original opinion incorrectly cited this as a 2001 opinion. It is actually from 2002]; 48 Op. Att’y Gen. No. 3 (1999); 41 Op. Att’y Gen. No. 91 (1986). The soundness of the holdings in these opinions is an issue not squarely presented by your request. For that reason, I express no opinion here regarding the effect of the 2001 amendments to the local government budget laws to the funding of a public library, leaving those questions for consideration when this office receives a request that presents those issues for review.



53 Op. Att’y Gen. No. 2, ¶ 16. Your request requires me to consider this previously unanswered question.

I.

[P10] Your first question concerns whether the City and County may reduce the tax levy (and, thereby, the library’s funding) and, instead, require that the library’s budget be funded through previously unspent funds in the library reserves.

[P11] A local governing body clearly has the authority to determine whether to levy taxes. See, e.g., Mont. Code Ann. § 7-6-2501. This is one of the most fundamental powers of government. Necessarily, a governing body also has the authority to determine *not* to tax. For example, as stated in Mont. Code Ann. § 7-6-4431(3): “An election is not required *for a governing body to impose less than the maximum number of mills* or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b).” (Emphasis added.)

[P12] However, while the City and County can determine how much to levy in taxes, they cannot exercise control of the library reserve funds. Montana Code Annotated § 22-1-309 clearly provides: “The library board of trustees shall have *exclusive control* of the expenditure of the public library fund . . . .” (emphasis added). Montana Code Annotated §§ 22-1-304(3) and (4) further speak to the exclusive authority of the Library Board and use of funds in the library reserve:

(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

[P13] Therefore, while the City and County have the authority to decrease the number of levies for support of the library, they do not have the authority to direct the Library Board in how to use the library reserve fund.

II.

[P14] Your second question directly confronts the authority of local boards to require local governing bodies to fund the budget as requested. Specifically, you ask whether the Library Board, by adopting a budget, can force the City and County to levy the

inflationary floating mill as provided for in Mont. Code Ann. § 15-10-420 in order to meet the Library Board's budget. The Library Board maintains the answer is yes and points to the aforementioned opinions of this office as "clearly and unambiguously" providing that the Library Board has the statutory authority over the library budget.

**[P15]** It should first be noted that previous opinions of this office have interpreted Mont. Code Ann. § 15-10-420 not merely to be permissive, as you indicate, but also as providing a cap on mill levies for a given year. 53 Op. Att'y Gen. No. 2, ¶ 2. That is, § 15-10-420 provides an *upper limit* on the tax revenue that may be raised in a given year, not a guaranteed minimum. This reading of § 15-10-420 is consistent with other provisions of the Montana Code. See, e.g., Mont. Code Ann. § 7-6-4431 ("The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects *in excess of the levy allowed by 15-10-420* under the following conditions . . . ." (emphasis added)).

**[P16]** Local government budget authority was significantly changed under the Local Government Budget Act, as well as other statutory provisions enacted during the 2001 legislative session. Prior to that, funding of public libraries was largely governed by Mont. Code Ann. § 22-1-304, which set specific limits on mill levies:

*Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service. The special tax levy that may be levied by the governing body of a county may not exceed 5 mills on the dollar on all property in the county. The special tax that may be levied by the governing body of a city may not exceed 7 mills on the dollar on all property in the city.*

Mont. Code Ann. § 22-1-304 (1999) (emphasis added).

**[P17]** In 2001, the legislature removed the mill levy limits in Mont. Code Ann. § 22-1-304. The present version of the statute now provides more simply:

*Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.*

[P18] This, however, is not the only change the 2001 legislature made that is germane to funding of public libraries. If it were, a library board's authority to demand unlimited public funds at the expense of other important government programs would be left unchecked. Instead, the legislature also enacted Mont. Code Ann. § 7-6-4035, which provides in relevant part, "The proposed budget and mill levy for *each board, commission, or other governing entity are subject to approval by the governing body.*" (Emphasis added.)

[P19] The legislature also enacted Mont. Code Ann. § 7-6-4036, which provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after the approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-4034.

Mont. Code Ann. § 7-6-4036(1)(b)-(c).

[P20] Thus, the 2001 legislature in effect upended the funding of public libraries. It went from a scheme in which library boards had complete control over the library budget, but the budget could not exceed the mill limits provided in Mont. Code Ann. § 22-1-304, to a scheme in which there were no mill limits in Mont. Code Ann. § 22-1-304, but the library board's proposed budget was subject to approval by the local governing body.

[P21] As I indicated in 53 Op. Att'y Gen. No. 2 (2009), requiring approval of a proposed budget of a local board (in that case, hospital districts) by the local governing body, as Mont. Code Ann. § 7-6-4035 does, would be a meaningless exercise if the local board could still require the governing body to approve its budget proposal without change. See 53 Op. Att'y Gen. No. 2, ¶ 12 (2009). This logic applies with equal force to library boards. And, as stated in 53 Op. Att'y Gen. No. 2, it is presumed the "legislature does not pass meaningless legislation." 53 Op. Att'y Gen. No. 2, ¶ 12 (citing Peris v. Safeco Ins., 276 Mont. 486, 492, 916 P.2d 780, 784 (1996)).

[P22] The Library Board correctly points to previous opinions of this office which conflict with my conclusion in this matter. However, two of the three opinions relied upon by the Library Board were issued prior to the changes to local government finance enacted by the 2001 legislature. To the extent those opinions conflict with the Local Government Budget Act and other provisions of the Montana Code, they are inapplicable to this question. It is worth noting, however, that one of those opinions acknowledged the exact concern I have expressed here and in 53 Op. Att'y Gen. No. 2 (2009), concerning the Library Board's authority to require a governing body to fund the library budget as requested without change. In 48 Op. Att'y Gen. No. 3 (1999), this office

acknowledged that interpreting the statutes at issue to allow a library board to force the governing body to adopt the board's budget beyond the mill levy limit at the time, "would allow library trustees to adopt a budget that could assume the entire general fund levy."

[P23] It should also be noted that this opinion is consistent with the Montana Supreme Court's holding in Trustees of Butte-Silver Bow Public Library v. Butte-Silver Bow County, 2009 MT 389, 353 Mont. 326, 221 P.3d 1175 ("BSB Public Library"), in a couple of significant respects. First, the Court in that matter was dealing largely with the question of whether the Butte-Silver Bow Public Library was, in fact, a "public library" under Mont. Code Ann. § 22-1-301. The county argued that because the library was not a "public library," the library "cannot be regulated under this statutory scheme because the Board is not a board of trustees within the meaning of § 22-1-308, MCA (2007)." BSB Public Library, ¶ 14. Accordingly, the county sought to exercise the authority found at Mont. Code Ann. § 22-1-310 to "appoint and set the compensation of the chief librarian . . ." BSB Public Library, ¶ 16 (quoting Mont. Code Ann. § 22-1-310). This authority, otherwise, belonged to the library board itself.

[P24] The Court concluded that the library met the definition of a "public library" and, in so doing, found that the "plain language" of Mont. Code Ann. § 22-1-310 "grants the Board, and not BSB, the authority to determine the salaries and compensation of Library employees. Notably, however, the opinion never touched on the question posed here of whether a library board's proposed budget is subject to approval by the local governing body as provided for in Mont. Code Ann. § 7-6-4035. Indeed, the Court never even cited to Mont. Code Ann. §§ 7-6-4035 or -4036 at all.

[P25] Thus, this opinion and the Montana Supreme Court's opinion in BSB Public Library are consistent: while this opinion holds that the library board's proposed budget is subject to approval by the local governing body, as provided for in Mont. Code Ann. § 7-6-4035, the Supreme Court's opinion in BSB Public Library holds that the *details* of that budget, such as fixing salaries and compensation and prescribing duties of employees, is the sole discretion of the library board, pursuant to Mont. Code Ann. § 22-1-310.

[P26] Finally, to the extent 49 Op. Att'y Gen. No. 16 (2002), failed to address Mont. Code Ann. §§ 7-6-4035 and -4036, its analysis is incomplete and it is inapplicable to the questions presented here.

III.

[P27] Due to my disposition of your second question, your third question is rendered moot. However, it should be noted that under both Mont. Code Ann. §§ 15-10-420 and 22-1-304, it is the “governing entity” or “governing body” that levies the tax, not the library board. Therefore no unconstitutional delegation of the legislature’s taxing authority exists. This same conclusion has been reached in previous opinions of this office. See 53 Op. Att’y Gen. No. 2, ¶ 6 (2009).

IV.

[P28] Your final question is answered in the same manner as the first, by reference to Mont. Code Ann. § 7-6-4431(3) which states, “An election is not required for a governing body to impose less than the maximum number of mills or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b).” Accordingly, the City is not obligated to continue to levy a particular number of mills in perpetuity.

THEREFORE IT IS MY OPINION:

1. While the City and County have the inherent discretion not to levy mills, Mont. Code Ann. § 22-1-309 clearly provides that the Library Board alone has the discretion to determine how to use unspent funds in the library reserve.
2. A library board no longer has sole discretion in determining the number of mills that must be levied for support of the library because Mont. Code Ann. § 7-6-4035 clearly provides that the proposed budget and mill levy for each board is subject to approval by the local governing body. Therefore the Library Board cannot require the City or County to levy a certain number of mills in support of the library.
3. Because the City and County have discretion to determine the number of mills necessary, they do not have to levy a particular number of mills in perpetuity.

Mr. Bruce Becker

June 1, 2012

Page 10

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Bullock', with a long horizontal flourish extending to the right.

STEVE BULLOCK

Attorney General

sb/zz/jym

## **Background to the Att'y Gen. Opinion 54, Number 7**

This is a summary of the previously issued AG opinions, the 2001 legislative changes, and the 2012 AG opinion. This summary was provided by MSL's legal counsel in 2013.

## **Powers of Library Boards of Trustees**

### Attorney General's Opinions Over the Years And the 2001 Legislative Changes

Jim Scheier  
Assistant Attorney General  
April 19, 2013

Free public libraries in Montana are governed by a board of library trustees. Library trustees have a broad range of powers and duties. They are given, by statute, exclusive control of the expenditure of the public library fund, the construction or lease of library buildings, and the operation and care of the library. Mont. Code Ann. § 22-1-309. The board of trustees also has the duty to appoint and set the compensation of the chief librarian and, with the recommendation of the chief librarian, to “employ and discharge such other persons as may be necessary . . . , fix and pay their salaries and compensation, and prescribe their duties.” Mont. Code Ann. § 22-1-310. The board of trustees prepares the library’s annual budget and submits it to the local governing body. Mont. Code Ann. § 22-1-309(6). The board also has other specific powers and duties as described in the statute, and shall “exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.” Mont. Code Ann. § 22-1-309(9).

Occasionally disputes arise between the local governing body and the board of trustees regarding the ultimate authority of each entity with respect to operation of and funding for the library. Beginning in 1986 the Attorney General has issued a number of opinions recognizing the broad statutory powers and duties vested in the board of library trustees, and the “substantial autonomy” given to the board in governing and operating the library. As we will see, however, the “autonomous” nature of the board’s authority has been tempered somewhat.

### **Opinions Issued Prior to the 2001 Legislative Changes**

#### **41 Op. Att’y Gen. No. 91 (1986)**

The Jefferson County Attorney asked the Attorney General 1) whether the Jefferson Board of County Commissioners could override the library board’s decision to grant pay increases to library staff, 2) whether the county commissioners could modify the annual budget submitted by the board of trustees, and 3) whether the county commissioners had the discretion to levy no millage for funding of the library. After referring to the various statutory powers and duties of the board of library trustees, the Attorney General observed:



This brief description of the library trustees' powers and duties reflects substantial autonomy from the governing body of the local governmental unit within which the library has been established. . . . The trustees are thus quite clearly granted direct responsibility for administering the library in a manner largely independent of city or county control. That the fiscal operation of the library is heavily interrelated with that of the local government does not, at least insofar as the trustees have been accorded explicit authority, mean that their determinations are subject to plenary review and possible modification by, in this instance, a board of county commissioners.

The Attorney General responded negatively to each question, concluding that the county commissioners had no authority to 1) modify the trustees' decision concerning wage and salary amounts for library staff, 2) modify the annual budget adopted by the trustees, or 3) within statutory millage limits, refuse to levy the property taxes necessary to satisfy the annual budget adopted by the trustees.

#### **42 Op. Att'y Gen. No. 98 (1988)**

Two years later the Great Falls City Attorney asked the Attorney General whether the city commission had the authority to overrule a decision of the library board not to sell or lease a parking lot held in the name of the City of Great Falls but purchased to serve the library's needs.

Some 23 years earlier the library board had asked the city to issue general obligation bonds to finance construction of a new library. The bonds were issued in the name of the city and the new library was constructed. Some of the bond money was used to purchase a parking lot for the library. While title to the lot was conveyed to the city, the library board had for 23 years leased out parking spaces in the lot to the public and received the income from those leases.

A developer of land adjacent to the library offered to purchase or lease the lot in order to meet the parking requirements of the city's urban renewal plan. Following two public hearings the library board declined to sell or lease the lot to the developer. The city wanted to know whether it could modify the board's decision.

The Attorney General cited Mont. Code Ann. § 22-1-309(4), which gives library boards the express power to sell, exchange, or otherwise dispose of real or personal property in the name of the city for the use and purposes of the library. Finding there was no similar authority granted to the city, the Attorney General determined that the city was not

entitled to transfer an interest in the parking lot without the approval and request of the library board. The Attorney General also referred to his previous opinion in 41 Op. Att’y Gen. No. 91 (1986), and reaffirmed the reasoning in that prior opinion:

Insofar as the library trustees have been given explicit authority under the Library Systems Act, their determinations may not be subjected to plenary review and possible modification by the city commission. I conclude that the city commission may not overrule the decision by the library board of trustees not to sell or lease the library’s parking lot.

### **48 Op. Att’y Gen. No. 3 (1999)**

The Big Horn County Attorney asked the Attorney General two questions: Where a county library is funded by a general fund levy under Mont. Code Ann. § 7-6-2501, does the board of county commissioners have the authority to 1) modify the annual budget submitted by the library board, or 2) modify the library board’s determination regarding the amount of pay increases for library personnel.

After discussing the prior Attorney General’s Opinions in 41 Op. Att’y Gen. No. 91 (1986) and 42 Op. Att’y Gen. No. 98 (1988), the Attorney General noted that, while the Big Horn County Library was funded through the general fund rather than through the library tax levy authorized by Mont. Code Ann. § 22-1-304, this “does not allow county commissioners to usurp the library trustees’ statutory authority in setting the library’s budget and compensation for the library staff.” The Attorney General observed that in enacting the statutes regarding the formation and operation of free public libraries, “the legislature clearly intended that library trustees be given independent power to manage and operate libraries without the threat of being censored by a city or county government.” The Attorney General reaffirmed the express statutory authority of library boards:

To hold that a board of county commissioners could usurp the library trustees’ express statutory authority by simply funding the library’s budget through the general fund would defeat the very purpose of free public libraries and render meaningless §§ 22-1-301 to -317. Accordingly, if the county commissioners fund the library’s budget through the general fund, the power to decide the budget and library staff compensation still rests with the library trustees as set forth in Mont. Code Ann. §§ 22-1-309 and -310.

The Attorney General also recognized that when a county chooses to fund its library through the general fund a public vote is not necessary for the county to provide the

library with funding in excess of five mills.<sup>1</sup> However, he noted that while the commissioners have no authority to modify specific parts of the budget submitted by the library board, they do have authority to “limit the overall funding of the budget to five mills as if it were being funded pursuant to tax levy under Mont. Code Ann. § 22-1-304,” observing that any other conclusion would allow library trustees to adopt a budget that could assume the entire general fund levy.

### **The 2002 Opinion**

#### **49 Op. Att’y Gen. No. 16 (2002)**

The Broadwater County Attorney asked the Attorney General whether the local library board had the authority to require the Broadwater County Commissioners to levy five mills to support the library. The Attorney General first noted that the 2001 Montana Legislature had passed House Bill (HB) 124, which made significant changes in the laws relating to local government and taxation. Specifically as it relates to libraries, HB 124 amended Mont. Code Ann. § 22-1-304 to delete the former reference to a five-mill levy. As amended, the statute authorizes the county to simply levy mills for support of the library, without reference to the number of mills levied, provided the budget fits within the restrictions of Mont. Code Ann. § 15-10-420..

In place of the numeric levies that were formerly found in Mont. Code Ann. § 22-1-304 and other statutes, Mont. Code Ann. § 15-10-420 as amended allows a county to levy sufficient mills to raise the amount of property tax raised in the previous year, with an upward adjustment to account for inflation. The Attorney General noted that since the reference to a five-mill levy has been eliminated from Mont. Code Ann. § 22-1-304, there is no longer a statutory basis to argue that the library board can require county commissioners to levy five mills for support of the library budget.

Nevertheless, the Opinion recognized the continuing significance of previous Attorney General’s Opinions dealing with the authority of library boards:

In my opinion, the 2001 statutory changes . . . did not delete the library board’s authority to determine the amount of financial support required by the library, *nor did they confer on the county commissioners the authority*

<sup>1</sup> In 2001 the Montana Legislature amended Mont. Code Ann. § 22-1-304 to delete the reference to a five-mill levy. The effect of the amendment was analyzed in 49 Op. Att’y Gen. No. 16 (2002), discussed below.

*to modify the library budget submitted by the library board.* (Emphasis added).

...

It is therefore my opinion that [HB 124] did not give the board of county commissioners the authority to modify the budget submitted by the library board pursuant to Mont. Code Ann. § 22-1-309(1), provided that budget fits within the provisions of Mont. Code Ann. § 15-10-420. . . . [T]hat statute, as amended in 2001, limits the county to the number of mills required to raise the amount of money raised in the previous fiscal year, subject to statutory adjustments. Under the reasoning of 48 Op. Att’y Gen. No. 3 (1999), the budget which the library board may require the commissioners to adopt is limited to the amount budgeted in the prior year as adjusted pursuant to section 15-10-420.

The Attorney General’s correctly concluded that HB 124, passed by the 2001 Legislature, did not affect the respective authority of library boards and local governing bodies with respect to library budgets. However, as discussed below, some ten years later the Attorney General acknowledged that the analysis in the 2002 Opinion was “incomplete.”

### **The 2001 Legislative Changes and the 2012 Opinion**

The four Attorney General’s Opinions discussed above clearly and consistently recognized the broad statutory powers and duties of library boards of trustees; authority that enables library boards to manage and operate a library “largely independent of city or county control.” However, an Attorney General’s Opinion issued last year changed the landscape somewhat.

#### **54 Op. Att’y Gen. No. 7 (2012)**

The Livingston City Attorney posed several questions regarding its relationship with the Livingston-Park County Public Library. The main question asked was whether the library board, by adopting a budget, could require the city and county to levy a sufficient amount to fund the budget as proposed by the board. The Attorney General reviewed previously issued opinions, as well as legislative changes made in the 2001 session. In particular, the Attorney General noted that the 2001 Legislature enacted Mont. Code Ann. § 7-6-4035, which provides in relevant part: “The proposed budget and mill levy *for each board, commission, or other governing entity are subject to approval by the governing body.*” (Emphasis added). The Opinion also referred to the enactment of Mont. Code Ann. § 7-6-4036, which provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-4034.

The Opinion determined that the 2001 legislative changes “upended the funding of public libraries,” changing the law from “a scheme in which library boards had complete control over the library budget . . . to a scheme in which . . . the library board’s proposed budget was subject to approval by the local governing body.”

The 2012 Opinion acknowledged that to the extent the 2002 Attorney General’s Opinion failed to address Mont. Code Ann. §§ 7-6-4035 and -4036, its analysis was incomplete and its holding was inapplicable to the questions presented by the Livingston City Attorney. To be fair, however, the 2002 Opinion only addressed HB 124, a lengthy and very complex bill known as “the Big Bill.” The Attorney General in the 2002 Opinion correctly determined that HB 124 did not change the respective budgetary powers of library boards and local governing bodies. The 2002 Opinion did not, however, address Senate Bill 138, passed in the same 2001 session, which enacted Mont. Code Ann. § 7-6-4035 and -4036, discussed above. These are the two statutes that place approval authority over library budgets directly in the hands of local governing bodies.

The 2012 Opinion also distinguished the Attorney General’s Opinions issued prior to the 2001 legislative changes, finding them inapplicable to the extent their holdings conflict with the 2001 changes to the statutes. Other aspects of those Opinions remain valid, however.

### **Conclusion**

The 2012 Opinion establishes new parameters on the relationship between a library board and the local governing body in the case of the preparation and approval of the library’s budget. The library board still has the statutory responsibility under Mont. Code Ann. § 22-1-309(6) to “prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds.” However, the budget prepared by the board is ultimately subject to approval by the local governing body. The 2012 Opinion did, however, recognize that library boards have the power to:

- Determine how to use unspent funds in the library reserve fund; and
- Determine the *details* of their budget, such as hiring and firing, fixing salaries, prescribing duties of library employees, personnel administration, etc.

Thus, while the 2012 Attorney General’s Opinion acknowledges that local governing bodies have final approval over budgets prepared by library boards, the Opinion also implicitly recognizes the basic principle that was first established in the 1986 Opinion – that library boards retain “responsibility for *administering* the library in a manner largely independent of city or county control.”

jms

## **FAQ for 54 Op. Att'y Gen. No. 7**

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Developed in 2012 to provide plain language answers to common questions.

### **Introduction:**

The Attorney General's office has released an opinion that impacts MSL's understanding of public library board powers when it comes to the library's budget. In the past the library board has been seen as the final authority when it comes to the library's budget, but this opinion states that MCA 7-6-4035 overrides that authority and gives the local governing body final authority over the approval of the library budget and mill levies. The opinion does confirm that library boards have sole discretion in the use of reserve funds and is also the final authority on individual line items within the budget.

**Where can I find a copy of this opinion?** <https://dojmt-zippykid.netdna-ssl.com/wp-content/uploads/54-Op-Atty-Gen-No-7-2012-libraries.pdf>

### **Why does the Attorney General state that the governing body has the final say?**

The Attorney General is looking at the text under MCA 7-6-4035 which gives final budgetary authority to the local governing body. The text of that law is below:

**7-6-4035. Tax levies for boards and commissions -- bond exemption.** (1) The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.

(2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt or for the operations of a regional resource authority are not subject to approval by the governing body.

(3) Except for judgment levies under 2-9-316 or 7-6-4015, all tax levies are subject to 15-10-420.

This piece of code appears to take precedent over MCA 22-1-309 (6) Trustees – Powers and Duties:

**22-1-309. Trustees -- powers and duties.** The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

### **What does this mean for our library?**

The impact of this opinion will probably vary for each library. If you have a good relationship with your city or county and/or if the city or county is financially stable, you might not be negatively impacted by this opinion. If your governing body is facing financial concerns this opinion holds that the city or county has the power to cut your budget. Unfortunately the library board doesn't have much recourse – other than public support for the library.

### **Can you explain the impact for each type of library?**

- City, county, or city-county libraries created by a resolution of their respective city council or county commission – local governing body has the final authority over the budget.
- Independent Public Library Districts formed by Title 22 – the county commission has the final authority over your budget.
- School-community libraries – if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a



contract and as such it gives your library some protection since it defines the support level of the county or city.

- Multijurisdictional Service District libraries - if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a contract and as such it gives your library some protection since it defines the support level of the county or city.
- Libraries created by an interlocal agreement as defined in Title 7 - if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a contract and as such it gives your library some protection since it defines the support level of the county or city.

**Does this opinion affect voted library levies?** Yes, this opinion appears to give city councils and county commissioners final authority for all types of levies including ones voted on by the people within a community.

### **What can we do?**

- Don't panic. This may or may not affect your library.
- Start collecting stories, data, and visual images that explain the value of the library and how it benefits the community. You may need this information to convince your local governing body to leave the library budget as is. This is a good idea to do all the time, not just in times of financial hardship. The online statistics center available at [http://msl.mt.gov/For\\_Librarians/For\\_Public\\_Librarians/Statistics/default.asp](http://msl.mt.gov/For_Librarians/For_Public_Librarians/Statistics/default.asp) may assist you with presenting the library's information in a visual and attractive way.
- Talk to your library board about this opinion and what it means for the library. You need to discuss whether or not you think this opinion will impact the library's budget and if so what strategy you would like to take to minimize the impact.
- If you think the local governing body will take advantage of this opinion to cut the library's budget begin identifying library supporters who will speak up for the library. You will need them to attend the local governing body's budget hearing, work with local government officials, and publicly and privately campaign for continued support of the library.
  - The American Library Association (ALA) has grassroots advocacy webinars that may help - <http://www.ala.org/advocacy/advleg/advocacyuniversity/onlinecourses>
  - The state library has advocacy and funding materials that might also assist you with this process. You can search our catalog at <http://msl.mt.gov>.
  - Contact MSL staff for more information and assistance. We can try to connect you with other public libraries that have been successful in winning support for the library. Our contact information can be found at: [http://msl.mt.gov/About\\_MSL/staff.asp](http://msl.mt.gov/About_MSL/staff.asp)
- Please talk to one of the following MSL staff about how this opinion might impact your library. We will use that information to decide upon the best course of action for libraries in Montana.
  - Tracy Cook, [tcook@mtlib.org](mailto:tcook@mtlib.org) or 866-843-6524
  - Sarah McHugh, [samchugh@mt.gov](mailto:samchugh@mt.gov) or 800-338-5087
  - Jennie Stapp, [jstapp2@mt.gov](mailto:jstapp2@mt.gov) or 800-338-5087
  - Lauren McMullen, [lmcmullen@mtlib.org](mailto:lmcmullen@mtlib.org) or 866-730-1681
  - Suzanne Reymer, [sreymer@mtlib.org](mailto:sreymer@mtlib.org) or 888-826-0837

### **What is MSL going to do at this time?**

- Talk to public library directors and/or trustees about how this opinion may impact their library.
- Carefully explore the option of adding public libraries as an exception to MCA 7-6-4035 – most likely working in conjunction with the Montana Library Association. There may be strong opposition to adding libraries as an exception, so it may not be in the best interest of libraries to pursue adding libraries as an exception.
- Talk to the Governor’s Office, the Montana Association of Counties (MACO) and the Leagues of Cities and Towns about any law changes to the local government budget act.
- Assist public libraries who may be negatively impacted by this opinion by researching and helping these libraries build support for the library budget.

## **ANSWERS TO ADDITIONAL QUESTIONS THAT WE HAVE RECEIVED FROM LIBRARIES**

### **This opinion appears to override the powers and duties of library boards- MCA 22-1-309 and MCA 22-1-707. Why is this?**

- The answer to this question lies in a 2009 Attorney General Opinion about hospital districts. The number of that opinion is 58 Op. Att’y Gen No. 2. In that opinion the Attorney General stated:

“In light of the budget statutes adopted in 2001, an argument that this language obligates the Granite County Commissioners to fund the district Trustees’ proposed budget without change cannot be accepted.

**[P10]** First, that conclusion produces an absurd result. It would allow the hospital district board to prevent the local governing board from addressing other important governmental responsibilities. Since the county commission is responsible for the provision of numerous public services specified by law, see Mont. Code Ann. § 7-6-2527 (enumerating nonexclusive list of permissible county expenditure of property tax revenue), the legislature cannot have intended to make hospitals a superior priority that could consume so much of the county budget that other needs would go unfunded.”

- The Attorney General went on to explain that it seems unlikely that the legislature would make meaningless legislation, and if hospital district boards were allowed to demand whatever budget they wanted it would make the 2001 law changes meaningless. He states “In my opinion, the best way to provide meaning and effect to all of these statutes is to construe the later-adopted provisions of §§ 7-6-4035 and 7-6-4036 to control the interpretation of § 7-34-2133 and negate an interpretation that would require the county commissioners to rubber-stamp the proposed budgets of hospital districts.”
- This same reasoning appears to apply to library boards. If you would like to review the Attorney General Opinion on hospital districts you can find it at [http://msl.mt.gov/For\\_Librarians/For\\_Public\\_Librarians/Library\\_Law/AG\\_Opinions/53-002.pdf](http://msl.mt.gov/For_Librarians/For_Public_Librarians/Library_Law/AG_Opinions/53-002.pdf).

### **Doesn’t the Butte Silver Bow Case address the issue of library board powers?**

- As you can see in the Attorney General Opinion the Butte Silver Bow Public Library Supreme Court case addressed the issue of whether or not the Butte Silver Bow Public Library was in fact a public library. It went on to address whether or not the library board had the powers listed in MCA 22-1-310 in terms of hiring and setting the compensation of the chief librarian. The case established these points which do strengthen the argument that library boards have authority over individual line items. It does not change the outcome of MCA 7-6-4035 which gives the local governing body authority over the bottom line of library budgets.

## **Board of Trustees, Butte-Silver Bow Public Library v. Butte-Silver Bow (DA 09-0024)**

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This Montana Supreme Court Case addresses library board authority to determine staff compensation.

November 17 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

DA 09-0024

IN THE SUPREME COURT OF THE STATE OF MONTANA

2009 MT 389

BOARD OF TRUSTEES, BUTTE-SILVER BOW  
PUBLIC LIBRARY,

Plaintiff and Appellee,

v.

BUTTE-SILVER BOW COUNTY,

Defendant and Appellant.

APPEAL FROM: District Court of the Second Judicial District,  
In and For the County of Butte-Silver Bow, Cause No. DV 08-267  
Honorable Kurt Krueger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Thomas M. Welsch, Poore, Roth & Robinson, Butte, Montana

For Appellee:

Peter Michael Meloy, Meloy Law Firm, Helena, Montana

For Amicus:

Steve Bullock, Montana Attorney General; James M. Scheier, Assistant  
Attorney General, Helena, Montana

Submitted on Briefs: September 16, 2009

Decided: November 17, 2009

Filed:

Clerk

Justice Brian Morris delivered the Opinion of the Court.

¶1 The Board of Trustees for the Butte-Silver Bow Public Library (the Board) brought an action against Butte-Silver Bow County (BSB) under the Uniform Declaratory Judgments Act. The Board asked the District Court to declare that the Board has exclusive authority to determine the salaries and compensation of Library employees. The Second Judicial District, Butte-Silver Bow County, granted summary judgment in favor of the Board. We affirm.

### ISSUE

¶2 We review the following issue on appeal:

¶3 *Did the District Court properly grant summary judgment to the Board?*

### FACTUAL AND PROCEDURAL BACKGROUND

¶4 The Butte-Silver Bow Public Library was established before 1900. The City of Butte and Silver Bow County were separate legal entities at that time. The citizens of the City of Butte and Silver Bow County adopted a consolidated form of government in 1977.

¶5 The Legislature enacted an “Act Providing for the Creation, Maintenance and Operation of Public Libraries in Counties and Cities” (Title 22, chapter 1, part 3, MCA) (the Act) in 1967. Section 22-1-310, MCA (2007), provides that the board of trustees of each library “shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board.” The statute further provides that the board “shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation,

and prescribe their duties.” Section 22-1-310, MCA.

¶6 For its part, the newly formed BSB enacted Ordinance No. 69, which went into effect in January 1979. Ordinance No. 69 created the “Butte-Silver Bow Public Library Board,” provided for the appointment of a Chief Librarian, and authorized the Board to enter into agreements concerning the operation and care of the Library. Ordinance No. 69 also gave the Board the authority to “supervise the affairs and management” of the Library.

¶7 The Chief Executive of BSB in early 2007 commissioned a study of pay and benefit equity issues across BSB. BSB sought to impose a classification system upon the Chief Librarian and the Library staff. BSB intended to adjust the salaries of the Library personnel based on the results of the study.

¶8 The Board filed a declaratory judgment action in District Court and asked the court to declare that the Board has the exclusive authority to determine the salaries and compensation of Library employees. The Board moved for summary judgment on the grounds that § 22-1-310, MCA (2007), controlled the outcome of the dispute. The Board argued that interpretation of the statute presented solely an issue of law.

¶9 The District Court granted the Board’s motion for summary judgment. The court relied on the 1977 consolidation and Ordinance No. 69 as evidence that § 22-1-310, MCA (2007), applies to the Library. “Based on the Montana Legislative enactment of 1967 and [BSB’s] enactment of Ordinance No. 69, it is difficult to find merit with [BSB’s] argument that because the public library existed before 1967 that it is exempt” from the statutory scheme. The court noted that there was no case law germane to the dispute and referred to

several Montana Attorney General Opinions that determined that boards of trustees had sole authority to set salaries for library employees. The District Court observed that a primary purpose of the Act was to give boards of trustees the budgetary power to manage public libraries free from government interference. The court concluded that BSB did not have the authority to manipulate Library staff wages and that such authority belongs solely to the Board. BSB appeals.

### STANDARD OF REVIEW

¶10 We review de novo a district court’s grant of summary judgment. *Citizen Advocates v. City Council*, 2006 MT 47, ¶ 16, 331 Mont. 269, 130 P.3d 1259. Summary judgment is appropriate only when “there is no genuine issue as to any material fact such that the moving party is entitled to judgment as a matter of law.” *Patterson v. Verizon Wireless*, 2005 MT 261, ¶ 9, 329 Mont. 79, 122 P.3d 1193. We review a district court’s conclusions of law to determine if they are correct. *Steer, Inc. v. Department of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990). We review de novo a district court’s interpretation of statutes. *LHC, Inc. v. Alvarez*, 2007 MT 123, ¶ 13, 337 Mont. 294, 160 P.3d 502.

### DISCUSSION

¶11 *Did the District Court properly grant summary judgment to the Board?*

¶12 BSB directs our attention to § 22-1-301, MCA (2007), which defines a “public library” as a library created under §§ 22-1-303 to -317, MCA, “that provides library services to the public by means of central facilities, branch facilities, or bookmobiles.” BSB maintains that the Library is not a “public library” within the ambit of the statutory scheme



because the Library was established before 1900, and the Library was not created pursuant to the Act.

¶13 The Act adopted by the Legislature in 1967 repealed the existing statutes governing libraries. In order to ensure that the Act would apply to libraries already in existence, the Act provides that “[a]ll public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.” Section 22-1-314, MCA (2007). The Act recognizes that public libraries existed before 1967. We find no merit in BSB’s argument that the Library cannot be a public library subject to the provisions of the Act because the Library was created before the Act was passed.

¶14 BSB next maintains that the Library cannot be regulated under this statutory scheme because the Board is not a board of trustees within the meaning of § 22-1-308, MCA (2007). BSB contends therefore that the statutory scheme can have no bearing on the operation, management, or administration of the Library.

¶15 Section 22-1-308, MCA (2007), states that upon the establishment of a public library, the mayor “with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the presiding officer of the board of county commissioners, with the advice and consent of the board, shall appoint a board of trustees for the county library.” BSB followed the directive of § 22-1-308, MCA, when it passed Ordinance No. 69 shortly after the City of Butte and Silver Bow County consolidated. Ordinance No. 69 provides for an “appointed Board of citizens of Butte-Silver Bow to supervise the affairs and management of the Butte-Silver Bow Public Library.” Ordinance

No. 69 further provides that the “Butte-Silver Bow Public Library Board shall have the authority to enter into agreements for the operation and care of the Butte-Silver Bow Public Library and to supervise the management and affairs of said Public Library.” The Board qualifies as a board of trustees within the meaning of § 22-1-308, MCA.

¶16 We turn to § 22-1-310, MCA (2007). This statute provides that the board of trustees of each library “shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board.” Section 22-1-310, MCA. The statute further provides that “[w]ith the recommendation of the chief librarian, *the board* shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, *fix and pay their salaries and compensation*, and prescribe their duties.” (Emphasis added.)

¶17 We interpret statutes and regulations in accordance with the plain language of the provision. *Shelby Distrib. v. Montana Dept. of Revenue*, 2009 MT 80, ¶ 18, 349 Mont. 489, 206 P.3d 899; *Barnard v. Liberty Northwest Ins. Corp.*, 2008 MT 254, ¶ 17, 345 Mont. 81, 189 P.3d 1196. The plain language of § 22-1-310, MCA, grants the Board, and not BSB, the authority to determine the salaries and compensation of Library employees.

¶18 BSB lastly asserts that the Board made no effort to establish that no genuine issues of material fact existed with respect to each of BSB’s three affirmative defenses of laches, waiver, and estoppel. BSB maintains that the Board failed to carry its initial burden on summary judgment.

¶19 We disagree. The Board’s motion presents only issues of law. The Board demonstrated that no genuine issues of material fact existed and that it was entitled to judgment as a matter of law. The District Court properly considered the statutory scheme and determined that it applied to the Library. A review of the statutory scheme plainly resolves the question of whether the Board has exclusive authority to determine the salaries and compensation of Library employees. We therefore need not address BSB’s arguments concerning affirmative defenses. The District Court properly granted summary judgment to the Board.

¶20 Affirmed.

/S/ BRIAN MORRIS

We Concur:

/S/ MIKE McGRATH

/S/ PATRICIA O. COTTER

/S/ W. WILLIAM LEAPHART

/S/ JIM RICE

## **57 Op. Att'y Gen. No. 3**

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2018 - opinion about local governing body's ability to remove appointed trustees from the library board.

**ATTORNEY GENERAL**  
STATE OF MONTANA

Tim Fox  
Attorney General



Department of Justice  
Joseph P. Mazurek Justice Bldg.  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

VOLUME NO. 57

OPINION NO. 3

**CITIES AND TOWNS** - The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library;

**LIBRARIES** – The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library;

**STATUTORY CONSTRUCTION** – A court should interpret a statute based on its plain language, neither inserting nor omitting language;

**MONTANA CODE ANNOTATED** – Title 22; Title 22, chapter 1, part 3; Title 22, chapter 1, part 7; Title 7, chapter 4; Title 7, chapter 4, part 41; sections 1-2-101, 1-2-102, 7-4-4103(4), 7-4-4303, 7-4-4303(2), 22-1-303(1), 22-1-308(1), 22-1-308(4), 22-1-308(5), 22-1-309(1), 22-1-402, 22-1-702(1), 22-1-706, 22-1-706(8), 35-1-217(2), 35-1-236(2).

**HELD:** The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library.

September 27, 2018

Ms. Lori A. Harshbarger  
Town Attorney  
Town of Twin Bridges  
c/o 336 Waterloo Road  
Whitehall, MT 59759

Dear Ms. Harshbarger:

[P1] You have requested an Attorney General Opinion, which I have restated below:

TELEPHONE: (406) 444-2026 FAX: (406) 444-3549 E-MAIL: [contactdoj@mt.gov](mailto:contactdoj@mt.gov) WEB: [mtdoj.gov](http://mtdoj.gov)

MONTANA DEPARTMENT OF JUSTICE

Legal Services Division \* Division of Criminal Investigation \* Highway Patrol Division \* Forensic Science Division  
Gambling Control Division \* Motor Vehicle Division \* Information Technology Services Division \* Central Services Division

Ms. Lori A. Harshbarger

September 27, 2018

Page 2

After the creation of a free public library and the appointment of library trustees, under Title 22, chapter 1, part 3 of the Montana Code Annotated, what is the source of authority and the procedure to remove a trustee from office?

[P2] Twin Bridges' town council passed a resolution to create a free public library under Mont. Code Ann. § 22-1-303(1). The Town is presently in the process of drafting an interlocal agreement pertaining to the Twin Bridges Town Library. The library is not part of a public library district (Title 22, chapter 1, part 7, Mont. Code Ann.) and is not part of a library federation (Mont. Code Ann. § 22-1-402). The draft interlocal agreement allows the Mayor of Twin Bridges to remove an appointed library trustee "for cause" with the consent of the Town Council.

[P3] You inform me that an attorney with the State Library Board has suggested that the Town's proposed provision conflicts with "the statutes protecting Library trustees" within Title 22. Presumably that attorney was referring to Mont. Code Ann. § 22-1-706. You propose instead that the mayor may remove a free library trustee under the general powers granted mayors in Title 7, chapter 4 (Local Government Officers and Employees) and specifically under Mont. Code Ann. § 7-4-4303.

[P4] Your question involves statutory interpretation. A primary rule of statutory interpretation requires courts to apply plain and unambiguous statutes according to their express terms. Mont. Code Ann. § 1-2-101. A court cannot amend, omit or insert terms of a statute. *Id.* The intention of the legislature is to be pursued if possible. Mont. Code Ann. § 1-2-102.

[P5] "When the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is no need to resort to extrinsic means of interpretation." *In re Marriage of Christian*, 295 Mont. 352, 356, 983 P.2d 966, 968 (1999); *State ex rel. Cobbs v. Montana Dep't of Social and Rehabilitation Servs.*, 274 Mont. 157, 162, 906 P.2d 204, 207 (1995) ("The Court is to effectuate the intent of the Legislature, and if the Legislature's intent can be determined from the plain meaning of the words used in a statute, the courts may not go further and apply any other means of interpretation.").

Ms. Lori A. Harshbarger

September 27, 2018

Page 3

[P6] Title 22, chapter 1, part 3 of the Montana Code Annotated—titled “Free Public Libraries”—provides for the creation of a public library in the manner chosen by Twin Bridges—by resolution of the governing body. Mont. Code Ann. § 22-1-303(1). Under that statute, the resolution must contain language “to the effect that a free public library is established under the provision of Montana laws relating to public libraries.” *Id.*

[P7] Upon the establishment of a free public library, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of five trustees for the library. Mont. Code Ann. § 22-1-308(1). Trustees serve in staggered terms, with each trustee limited to two five-year terms. *Id.*, § 22-1-308(4). Vacancies and replacements are made by appointment in the same manner as the original board. *Id.*, § 22-1-308(5). However, Title 22, chapter 1, part 3 does not provide a specific procedure by which a free public library trustee may be removed from that appointed office.

[P8] As noted above, Montana courts will not insert what has been omitted from a statute. Mont. Code Ann. § 1-2-101; *Sturchio v. Wausau Underwriters Ins. Co.*, 2007 MT 311, ¶ 15, 340 Mont. 141, 172 P.3d 1260. A reasonable reading of the statute, in its entirety, is one method of arriving at legislative intent. *Id.* Because Title 22, chapter 1, part 3 does not include a specific provision for the removal of trustees, I must look to the general authority provided within this part, unless another section of the Code specifically applies to free public libraries.

[P9] The removal of appointed trustees of a public library is not provided for by Title 7, chapter 4 as you contend. While Mont. Code Ann. § 7-4-4303(2) provides that the mayor may suspend or remove “nonelective officers” with the approval of the council, the “officers” referred to are the nonelected officers listed in part 41 that the mayor may appoint. *See* Mont. Code Ann. § 7-4-4103(4) (nonelected officers of towns include one clerk, one marshal, and “other officers necessary to carry out the provisions of *this title*.”) (emphasis added). The board members of a public library established under Title 22 are not “necessary to carry out the provisions of” Title 7. When considering Title 7 in its entirety, the mayor’s power to remove “nonelective officers” under § 7-4-4303(2) does not include the power to remove public library board trustees. To read this statute as broadly as you suggest would be to improperly insert something that the Legislature omitted, in violation of Mont. Code Ann. § 1-2-101. *See also University of Texas*

Ms. Lori A. Harshbarger

September 27, 2018

Page 4

*Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013) (when the language of a statute is clear “it would be improper to conclude that what [the Legislature] omitted from the statute is nevertheless within its scope.”).

[P10] Likewise, the provisions of Title 22, chapter 1, part 7 are not applicable. This section provides for the creation of a “public library district,” including the *election* of a board of trustees for the library district. Mont. Code Ann. § 22-1-706. These elected library district trustees may only be removed “by a court of competent jurisdiction pursuant to state law governing the removal of elected officials.” Mont. Code Ann. § 22-1-706(8). A public library created under part 3, and a library district created under Part 7, however, are different entities. A “public library” under Part 3 means “a library created under (a) [Part 3]; or (b) Title 7.” Mont. Code Ann. § 22-1-301(3) (Part 7 is not listed as an alternative). Here you represent that the town created the free public library under Part 3. And Public library trustees are also appointed by the mayor, not elected. While a “public library” under Part 3 may be “conver[ted] . . . to a public library district,” Mont. Code Ann. § 22-1-702(1), until “conversion” occurs, Part 3, not Part 7, controls.

[P11] I must look to Title 22, chapter 1, part 3, then, to locate authority regarding removal of a trustee. The power to determine the criteria for trustee removal lies with the library board of trustees. The board is specifically provided the authority to “adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law.” Mont. Code Ann. § 22-1-309(1). The “government of the library” generally includes removal of a trustee. Because the remainder of part 3 fails to specify the manner for removal of an appointed trustee, it necessarily may be implied that the procedure for removal of trustees is a matter to be determined by the board when pursuing its self-governance rulemaking obligation.

[P12] This result complies with Montana law regarding corporate governance. Generally, the removal of a board member, director, officer or agent of a corporation is governed by the corporation’s bylaws, charter, certificate of incorporation or by statute. 19 C.J.S. Corporations §§ 536, 537 (2018). Montana provides corporations (both business and nonprofit) the broad authority to adopt bylaws intended to regulate and manage the affairs of the corporation “consistent with law or the articles of incorporation.” Mont. Code Ann. § 35-1-236(2) and



Ms. Lori A. Harshbarger

September 27, 2018

Page 5

§ 35-1-217(2), respectively. Similarly, where “the legislature has failed to prescribe policy, local boards have inferred general powers to act.” *School District v. Hughes*, 170 Mont. 267, 274, 552 P.2d 328, 332 (1976) (citing *Campana v. Calderhead*, 17 Mont. 548, 44 P. 83 (1896)). In the absence of specific authority to the contrary, a public library board may adopt procedures for the removal of trustees as part of its bylaws.

THEREFORE, IT IS MY OPINION:

The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'T. Fox', with a long horizontal line extending to the right.

TIMOTHY C. FOX  
Attorney General

tcf/jss/jym