

KURT KRUEGER  
DISTRICT COURT JUDGE, DEPT. I  
SILVER BOW COUNTY COURTHOUSE  
155 W. GRANITE ST.  
BUTTE, MT 59701  
406/497-6410

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THE MELOY LAW FIRM

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MONTANA SECOND JUDICIAL DISTRICT, SILVER BOW COUNTY

BOARD OF TRUSTEES, BUTTE-SILVER  
BOW PUBLIC LIBRARY,  
Plaintiff,

vs.

BUTTE-SILVER BOW COUNTY,  
Defendant.

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CAUSE NO. DV-08-267

ORDER GRANTING  
MOTION FOR  
SUMMARY JUDGMENT

This matter came before the Court by Plaintiff's Motion for Summary Judgment. A hearing on Plaintiff's Motion was held on October 7, 2008. Appearing on behalf of Plaintiff was Peter M. Meloy, Esq., and appearing on behalf of Defendant was Thomas M. Welsch, Esq.

The basis of this matter arises from a disagreement between the Board of Trustees of the Butte-Silver Bow Public Library and Butte-Silver Bow County regarding which entity has the authority to set wages for Butte-Silver Bow Public Library employees and the Chief Librarian. Plaintiff argues that § 22-1-310, MCA (2007), is controlling and grants authority to the Board of Trustees to establish wage and salaries for the library staff. Alternatively, Defendant primarily disagrees with Plaintiff, but as regarding this Motion, argues that summary judgment is premature because Plaintiff failed to carry its summary judgment burden and that further discovery is needed in this matter.

This specific matter presents a unique question and this Court is left with little guidance from Montana case law. The primary statute in question reads:

**21-1-310. Chief Librarian – personnel – compensation.** The Board of Trustees of each library shall appoint and set the compensation of the Chief Librarian who shall serve as a Secretary of the Board and shall serve at the pleasure of the Board. With 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.

The above statute is based on the Library Systems Act which originated partially in the 1947 Revised Codes of Montana, and amended and enacted under the 1967 Montana Legislature. *See* § 1, Ch. 260, L. 1967. Section 6 provides that the Board of Trustees “. . . 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 . . .” *Id.* at § 6. Defendant has argued in this matter that libraries enacted prior to this Act do not fall within the scope of the Act. The parties acknowledged that Butte had a public library prior to 1967. While this begs the question as to the status of several libraries throughout the state, Butte also has several other unique circumstances that do not support Defendant’s contention. Specifically, the present day Butte is no longer merely a city but is now a hybrid city-county government. The legal status of the City of Butte changed in 1977 when Silver Bow County and the City of Butte merged into one government. This merger was clearly after the 1967 Library Systems Act.

Furthermore, the newly formed Butte-Silver Bow enacted Ordinance No. 69 which went into force in early January, 1979. The purpose of Ordinance No. 69 was to create a board titled the Butte-Silver Bow Public Library Board. The purpose of the board was to appoint a Chief Librarian and to manage the operations and care of Butte-Silver Bow Public Library. Ordinance No. 69 was also passed after the enactment of the Library Systems Act. Based on the Montana Legislative enactment of 1967 and Butte-Silver Bow’s enactment of Ordinance No. 69, it is difficult to find merit with Defendant’s argument that because the public library existed before 1967 that it is exempt from the Library Systems Act.

In further defense of Defendant’s argument, Defendant cited one case to support its position. *See Local 2390 of American Federation of State, County, Municipal Employees, A.F.L.C.I.O and Mrs. Ruth Ware v. City of Billings, Montana, a Quasi-Municipal Corporation* (1976), 171 Mont. 20, 555 P.2d 507. In *Local 2390*, a public employee terminated from working at the public library brought an action pursuant to a collective bargaining agreement between the City of Billings and her union. 171 Mont. 20, 21-22, 555 P.2d 507, 508. On appeal, the Montana Supreme Court did determine that the City of Billings and not the library trustees determined salaries and wages of personnel. 171 Mont. 20, 24, 555 P.2d 507, 509. However, this determination was based on the collective bargaining agreement between the City and the union. *Id.* The Montana Supreme Court only held that there was “no inconsistency between the Library Systems Act and the Collective Bargaining for Public Employees Act.” *Id.* There is no union or collective bargaining agreement that has been pled in this matter. Clearly, the holding

in *Local 2390* was limited to a discussion of who was an employer for the purposes of language within a collective bargaining agreement. These facts are just not before this Court.

Being that there is relatively no case law pertaining to the facts before the Court, the Court located several Montana Attorney General Opinions that answered the question presently before the Court. In 1986, former Attorney General Mike Greely was asked to determine whether or not the Jefferson Board of County Commissioners had the authority to override the trustees' determinations to give pay increases to library personnel. 41 Mont. Atty. Gen. Op. No. 91, 1986 WL 238472. Greely determined that the Board did not have such authority. *Id.* After reviewing *Local 2390*, Greely determined that *Local 2390* merely was a determination of the terms of a collective bargaining agreement. *Id.* at 2. Furthermore, Greely focused on § 22-1-310, MCA, explaining that this statute gives broad powers to a board of trustees that are independent of city or county control. *Id.* Finally, Greely explained that § 22-1-309(6), MCA, gives authority to the trustees to create a budget, that this ability is "integral" to their independence. *Id.* at 3. Greely concluded that a Board of County Commissioner's only role in the library's budgetary matters "is to assign a property tax levy amount, which presently cannot exceed five mills, sufficient to satisfy budgetary needs." *Id.* Concluding, former Attorney General Greely explained that a Board of County Commissioners has no authority to modify wage and salary determinations made by the County Library Trustees. *Id.*

In 1988, former Attorney General Greely again explained that he previously determined a Board of County Commissioners did not have the authority to override a County Library Board of Trustees' decision to set wages for library employees. 42 Mont. Atty. Gen. Op. No. 98, 1988 WL 429923, at 2. Greely went on to explain in this opinion that a City Commission cannot overrule a Board of Library Trustees' decision regarding the lease or sale of a parking lot purchased by a city for library purposes. *Id.*

In 1999, former Attorney General Joseph Mazurek focused on the same reasoning as former Attorney General Greely on a similar issue. 48 Mont. Atty. Gen. Op. No. 3, 1999 WL 297707. Here, Mazurek was asked whether or not a Board of County Commissioners had the authority to modify the Library Trustees' decisions to set salaries for library employees based on the fact that the library was funded by a general fund levy. *Id.* Mazurek referred to former Attorney General Greely's determination that trustees have express authority to set compensation levels and that a Board of County Commissioners cannot overrule the Trustees' decisions. *Id.* In Mazurek's opinion, he explained that a county does not have the authority to set library employee

compensation merely because the library is funded through a general fund. *Id.* Mazurek further explained that while County Commissioners may limit the budget not to exceed 5 mills, the County Commissioners do not have the power to modify specific parts of the budget. *Id.* Concluding his opinion, former Attorney General Mazurek determined that merely because a library is funded by a general levy, a Board of County Commissioners do not have the authority to modify Trustee's decisions to set wages for library staff. *Id.* This Court would note that § 22-1-304, MCA, has been altered since 1999 but that the alterations are regarding the amounts of money that can be levied to fund the public library. There is no language in the current § 22-1-304, MCA, that entitles County Commissioners to have more control over specific items of a library budget.

In conclusion, this Court is not persuaded by Defendant's argument that merely because a library existed in Butte-Silver Bow County prior to the 1967 Act that the Butte-Silver Bow Library does not fall within the statutory mandates. Furthermore, the Butte-Silver Bow government changed in 1977 and the new government enacted Ordinance No. 69 designating a Library Board of Trustees. Finally, the Court is persuaded by the reasoning set forth in both former Attorney General Greely's and former Attorney General Mazurek's opinions. A primary purpose of the Library Systems Act was to enable a Board of Trustees the budgetary power to manage a public library free from the interference of the government. Therefore, the Court finds that Butte-Silver Bow County does not have the authority to manipulate library staff wages and salaries and that the setting of wages and salaries is within the powers of the Library Board of Trustees. Based on the Court's conclusions outlined in this Order, the Court finds no need to further discuss Defendant's remaining contentions regarding summary judgment burden and the need for additional discovery.

Based on the foregoing, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment be GRANTED.

DATED this 23 day of December, 2008.



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KURT KRUEGER  
District Court Judge