

State Librarian's Report

Prepared for February 09, 2011 Commission Meeting

By Darlene Staffeldt, State Librarian

The question for this week, month, and legislative session is do we need a new library law or not.

Background: On Sunday, January 2, 2011 Commissioner Richard Quillin forwarded to all of you, as well as to me, the materials from Jerry Hanson, Whitefish attorney, regarding Mr. Hanson's recommendations for Montana Library law changes. These materials are the basis for current legislation to change library law, legislation that is sponsored by Senator Zinke of Senate District 2.

Judy Hart, Montana Library Association Government Affairs Chairperson, and I met briefly in the hallway of the Capitol with Senator Zinke on Wednesday, January 12, 2011 to try to understand what, if any, of the pieces from Mr. Hanson's memo, the Senator was going to move forward as a bill. We offered to assist Senator Zinke by providing him information about interlocal agreement statutes, and the roles and responsibilities of the State Library so that he might better understand that this does not include ruling on local issues but does include consulting with libraries to draft better interlocal agreements. Senator Zinke's main concern seemed to be the distribution of the "joint assets" at the time of termination of an interlocal agreement between two entities. Senator Zinke moved forward with a bill draft request which can be found on the legislative website ([http://laws.leg.mt.gov/laws11/law0203w\\$.startup](http://laws.leg.mt.gov/laws11/law0203w$.startup)) as bill draft LC2032. I have copied the text of the legislation here as well:

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE APPROVAL OF THE COUNTY BOARD OF COMMISSIONERS BEFORE LIBRARY ASSETS CAN BE DIVIDED UPON THE DISSOLUTION OF AN INTERLOCAL AGREEMENT TO PROVIDE LIBRARY SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Division of library assets upon dissolution of agreement --

definition. (1) If an interlocal agreement under Title 7, chapter 11, part 1, governing the provision of library services to a public agency by another public agency is dissolved by either party to the agreement, the final division of library assets must be approved by the board of county commissioners of the county in which the agreement had effect.

(2) For the purposes of this section, the term "public agency" has the meaning provided in 7-11-103.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 22, chapter 1, part 3, and the provisions of Title 22, chapter 1, part 3, apply to [section 1].

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

- END -

My concerns with this legislation are many but I will try to provide a simple summary here:

Senator Zinke is trying to be responsive to some of his constituents by bringing forward this legislation. I am saddened by the situation with regard to the Whitefish Library and their relationship with the Flathead County Library System but, even as Senator Zinke mentioned more than once, "it is a personality clash". Personality clashes in local communities should not, and probably cannot, be fixed by statewide legislation.

The Legislation is unnecessary. Disposition of assets is clearly meant to be covered by the interlocal agreement itself. The legislation muddies the water since agreements tend to vary widely across the state. Writing a law for such a rare and specific occurrence makes little sense.

Specific to this legislation, because it would require County Commissions to determine the disposition of assets, I believe this causes a significant conflict of interest on the county's part because, in almost all cases involving libraries, the county commission is most likely a signatory on the interlocal agreement. How will most cities or schools feel about having the distribution of assets approved by the county which is part of the agreement in the first place?

At the very least the provisions of LC2032 appear to be inconsistent with the provisions of existing law which seem to encourage counties and municipalities to enter into contracts to provide library services (the Interlocal Cooperation Act at 7-11-1 MCA and 22-1-312 MCA). Contracts usually cover all of the relevant details of these relationships, so why muddy the water by granting additional power to county commissions to approve or disapprove a portion of those relationships.

Lastly, in the past, any changes to Montana Library Laws have been taken to the library community prior to being presented to the legislature so that the local library communities can learn about the proposed legislation and study how it will impact their local library services. Because these proposed changes were brought to the attention of the State Library the day the session began, there was no opportunity for this kind of review.

The State Library's attorney has reviewed the draft legislation and his comments primarily mirror the concerns expressed above. He advises that we may want to present informational testimony pointing out these concerns, rather than to oppose the bill. Once the draft is accepted by

Senator Zinke, then a bill number will be assigned and the bill will be assigned to a Committee for a hearing. Following the public hearing, the Committee will take executive action on the bill. They can pass it forward to the Senate floor for debate and action; or they could defeat the legislation at the Committee level, or they could table the legislation in the Committee. If it passes onward it would have to pass third reading in the full chambers and then move on to the House where the process will be repeated again.

The Montana Library Association Board moved at its board meeting on Tuesday, January 18th to have Judy Hart and the MLA Lobbyist oppose this legislation at any hearings.

The Commission will need to decide what role to take in this legislation process as it moves forward. Our options are:

- (1) Support the legislation.
- (2) Oppose the legislation.
- (3) Attend the hearing as an informational witness only.

I see no reason to support the legislation at this time. If you choose to oppose the legislation hopefully a bad bill would not be passed into law. Additionally, this opposition would support the stance taken by the Montana Library Association and the librarians they represent.

Unfortunately, by opposing the legislation, it may appear that the State Library is taking sides against one of our Montana Libraries. Attending as an informational witness would not be as strong a statement against the legislation and, without a strong statement, there may be a greater likelihood for the legislation to be passed forward. However by remaining an information witness, it might not be viewed as politically negative against the Senator and against the Whitefish library community. But, again, it could be viewed as not supporting other Montana Library communities.

A hearing has not been set yet, but it could get on the calendar before your meeting on the 9th. If the hearing occurs before the 9th, I will try to read the climate of the room and present testimony as an informational witness or as a witness opposed to the bill. Please let Commission Chair Don Allen and myself know right away if you have strong feelings regarding which option I should use when testifying.