

Memo

To: Montana State Library Commission

From: Jennie Stapp, State Librarian

Date: March 21, 2012

Re: Draft AG Opinion regarding request from the Livingston Library Board

In early February the Livingston County Library Board received a draft Attorney General Opinion in response to several questions including, specifically, whether or not a Library Board can require the City or County to levy an inflationary floating mill? The draft opinion, which I must caution, at this date, *is not final*, finds that:

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.

If held, this opinion has the potential to substantially alter our understanding of Montana library boards' autonomy to set library budgets.

Below is a copy of the comments that were submitted to Mr. Zach Zipfen, Assistant Attorney General, on March 20 on behalf of the Commission. At this time we are awaiting the final opinion from the AG's office.

March 14, 2012

Zach Zipfel
Assistant Attorney General
P.O. Box 201401
Helena, MT 59620-1401

Re: Draft Attorney General's Opinion re Library Board budgets

Dear Mr. Zipfel,

The Montana State Library Commission (the Commission) has reviewed the draft Attorney General's Opinion regarding the referenced matter. Please accept this letter as comments to your draft opinion, submitted on behalf of the Commission.

The Commission agrees with the portion of the opinion concerning the Library Board's autonomy over its reserve fund.

The apparent conclusion in the draft opinion that, in effect, public libraries no longer have the ultimate authority and discretion to determine their annual budgetary needs appears to conflict with years of legislative history and legal analysis. Historically in Montana there has been a concern that local political agendas, as reflected by governing bodies, should not be allowed to influence library collection content and library services available to Montana citizens. Free public libraries serve as portals to uncensored, unbiased information vital to maintaining a democracy with an informed citizenry. The "desire to divorce the public library from politics . . . has continued for over a century to be a guiding policy of library statesmanship." Ladenson, Alex, *Library Law and Legislation in the United States* (1982). Thus, under Montana law, our libraries have been given a degree of autonomy to ensure that political agendas do not inappropriately alter or impact the public library's mission.

As the draft opinion acknowledges, this autonomy has been upheld by a number of AG opinions over the years. Most recently, 49 Op. Att'y Gen. No. 16 (2002) held that "[t]he 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." That opinion further states:

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 [referring to 41 Op. Att'y Gen. No. 91 (1986) and 48 Op. Att'y Gen. No. 3 (1999)] 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.

Although, as the draft opinion states, 49 Op. Att'y Gen. No. 16 does not directly address Mont. Code Ann. § 7-6-4035, that opinion goes on to substantiate its analysis through a review of legislative history in the creation of House Bill 124 or the "Big Bill" of 2001, part of the legislation that put in place the county and municipal budgetary authority that exists today.

In 2009 library board autonomy was again upheld in the Montana Supreme Court's opinion in *Trustees of Butte-Silver Bow Public Library v. Butte- Silver Bow County*, 2009 MT 389, 353 Mont. 326, 221 P.3d 1175. Although the decision primarily involved an interpretation of Montana Code Annotated § 22-1-310, the Supreme Court affirmed the decision of the District Court, which had observed that "a primary purpose of the [Library Systems] Act was to give boards of trustees the budgetary power to manage public libraries free from government interference." *Id.* at ¶ 9.

The Commission acknowledges that there have been changes to the funding mechanisms used to levy mills to fund government services, as well as to county and municipal budget laws in general. *See*, e.g., HB 124 and SB 138 enacted by the 2001 Montana Legislature. However, it is at least debatable whether these changes were intended to substantially alter a library board's ultimate budgetary authority under Mont. Code Ann. § 22-1-309.

The history of support for the autonomy of library boards is important in further analysis of 53 Op. Att'y Gen. No. 2 (2009), which addresses a similar question for hospital districts. Although that opinion determined that the county commissioners were not obligated to "rubber stamp" the budget proposed by the hospital district, the Commission is not aware of any legal analysis or legislative history that grants hospital boards a degree of budgetary discretion that is

intended to free them from political agendas, as has been so soundly supported and recognized for Montana libraries.

The draft opinion cites 53 Op. Att'y Gen. No. 2 in its analysis of Mont. Code Ann. § 7-3-4035, which noted that it would be a meaningless exercise for a governing body to approve a proposed budget for the hospital board if the hospital board could still require the governing body to approve its budget proposal without change. See 53 Op. Att'y Gen. No. 2, ¶ 12 (2009). However, the same argument would seem to apply with even greater force to a library board's authority under Montana Code Annotated § 22-1-309(6). Would it not also be a "meaningless exercise" for a library board to prepare a budget, after carefully determining the amount of support from public funds that the library will need during the next year, if the governing body could then modify that budget, or perhaps even determine that it need not provide any funding for library services? The Commission respectfully submits that such a potential result cannot have been envisioned by the Legislature when it revised the local government budgeting laws in 2001, given the unique historical relationship between library boards and local governing bodies.

In the event that the draft opinion as finalized determines that local governing bodies do, in fact, have the authority to modify a budget submitted by a library board, it would be helpful to clarify the limitations of such authority. Thus, if it exists, any such authority of a local governing body to modify a library's budget should be limited to the total amount of library funding from public tax revenue, and should not include any type of "line item veto" authority by a local governing body. For example, it would be inappropriate for a county commission or a city council to be able to decide not only that the budget submitted by the library board was going to be reduced, but that the reduction must come from the book purchasing portion of the budget. In addition, the opinion should recognize the continuing exclusive authority of library boards of trustees over matters involving the internal operation of the library, such as entering into contracts, operating and caring for the library, hiring librarians and staff and determining their salaries, acquiring property for use of the library, etc.

Thank you for giving us the opportunity to comment on the draft opinion. We believe the draft as currently written could have a major impact on our constituents, and consequently we appreciate the chance to express our concerns. If you have any questions or require additional information please do not hesitate to contact me. I can be reached by email at jstapp@mt.gov, or phone at 444-3116.

These comments are respectfully submitted at the request of the State Library Commission by,

A handwritten signature in black ink that reads "Jennie Stapp". The signature is written in a cursive style with a large, looping initial "J".

Jennie Stapp

Montana State Librarian