MONTANA PUBLIC LIBRARY MEETING ROOMS AND DISPLAYS

MONTANA STATE LIBRARY SUMMER 2025

These materials are designed to provide information regarding areas of the law and best practices concerning the identified topics. These materials are not intended to be a rendering of legal advice. The reader of these materials should request legal advice from an attorney on specific legal inquiries.

INTENDED OUTCOMES

This session provides library leaders foundational guidance about the legal and operational issues related to public forum, meeting rooms, and displays in Montana's libraries. Emerging and ongoing issues are presented so participants complete the session with renewed confidence in handling these matters.

QUESTION: WHAT LAWS ADDRESS LIBRARY MEETING ROOMS AND DISPLAYS?

CONSTITUTIONAL FOUNDATIONS

- The United States and Montana Constitutions guarantee rights to expression and access to information.
- United States Constitution, Amendment 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
- Montana Constitution, Article II, Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

LIBRARY AS PUBLIC FORUM

Traditional Public Forum

 Streets, parks, sidewalks traditionally held to be locations for the public to assemble and communicate.

Limited Public Forum

 Property the government has intentionally established or opened for expressive activity.

Nonpublic Forum

 Property of the government reserved for specific governmental function even if that function includes communication.

Factors for Determination

 Written policy, consistent application of policy, function of the forum, criteria within the policy

Restrictions on Speech in Forums

Type of forum will determine standard of review: strict scrutiny or rational basis.

LIBRARY AS PUBLIC FORUM

- A library or school (or part of a library or school) can be considered a designated or limited public forum.
- In determining whether a "designated public forum" exists courts will look to "policy and practice" to ascertain whether the entity "intended to designate a place not traditionally open to assembly and debate as a public forum." Cornelius v. NAACP Legal Defense & Ed. Fund, Inc., 473 U.S. 788 (1985).
- A designated public forum is "property that the State has opened for expressive activity by part or all of the public." *International Soc. For Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992).
- A designated public forum is created by "purposeful government action."
 Arkansas Educ. Television Com'n v. Forbes, 523 U.S. 666 (1998).

LIBRARY AS PUBLIC FORUM

- Courts have held that the right to receive information "[i]ncludes the right to some level of access to a public library, the quintessential locus of the receipt of information." Kreimer v. Bureau of Police, 958 F.2d 1242, 1255 (3d Cir. 1992).
- Public libraries are recognized areas for accessing to information, but unless specifically authorized by the library not for engaging in other types of expressive activities like making speeches or distributing pamphlets. Library and school district policy should outline the use of facilities.
- The library has the authority to establish reasonable rules governing library use. A library's power to regulate patron behavior is not limited to just cases of "actual disruption," but may be tied to safety, use of resources, and other reasonable concerns directed to fulfilling the library's mission.

CONDUCT AND BEHAVIOR EXPECTATIONS

- Numerous court decisions have found a public library has the authority to establish reasonable rules governing library use. The library's facilities and conduct policies must be developed in a legally compliant manner.
- Common areas of library governed by general patron conduct and behavior policy
- Meeting rooms and display cases may be addressed in a distinct policy while still honoring general conduct policy.
- Terms to remember
 - Content: subject matter or topic
 - Viewpoint: opinion on subject matter or topic
- Content-based restriction analysis for traditional or designated forum:
 - (1) is there a compelling government interest for the restriction;
 - (2) is the restriction narrowly tailored to achieve the compelling interest; and
 - (3) is there a less restrictive alternative to the restriction.
- Viewpoint-based restrictions: not permitted.
- Time, place, and manner restrictions: must be content neutral and reasonable in light of the nature of the forum.

DISPLAY CASES

- The library is not required to offer public access to display cases but once it does it has established a designated public forum for citizens to engage in speech consistent with their rights.
- When this occurs, display cases are covered by similar concepts and policies as meeting rooms.
- If no policy is in place, the library's practice can be challenged where the library as it attempts to dictate what can be shown in a display case.
- Restrictions on use of display cases must be content-neutral and limited to reasonable time, place and manner rules.
- The library can post a sign near the display case making clear that the views are those of the group or individuals contributing material, not the library.
- Library may solicit materials for a display case without opening the forum to public use, as long as it is clear that it is a library presentation.

CERTAIN TYPES OF USE

Faith-Based Use

Library facilities may be use by faith-based groups in the same manner as other entities or individuals consistent with the conduct expectations in the facilities use policy. Permitting use does not constitute and endorsement or entanglement with the faith under establishment clause. See *Liberty Counsel Cases*.

Political or Ideological Use

Partisanship or ideology are not a basis to deny access to a library facility. Such a denial would be restriction of access based on viewpoint. Use of the facility in a manner consistent with behavior requirements is permitted. Avoidance of controversy is not a basis to deny access. See *Cornelius*.

Library Staff Involvement

The library provides the forum but service to the group beyond general assistance should be carefully managed to avoid potential claims of library staff misusing public resources under Sections 2-1-104, 2-1-121, 2-1-122, MCA

Commercial Use

Rules about use of library space for business purposes may occur but "...government restrictions upon commercial speech may be no more broad than is necessary to serve its **substantial** interests." See *SUNY v. Fox*

QUESTION: HOW DO THESE LAWS AND CONCEPTS APPLY TO LIBRARY OPERATIONS?

POLICY FUNDAMENTALS

- Sound library meeting room and display policies adopted in a manner consistent with law will:
 - support the mission of the library to be a place to access information.
 - balance and protect the rights of each patron to access information in a confidential manner while in a safe and welcoming facility.
 - refer to the patron conduct and recording policies to ensure coordination between the three documents.
 - not include any viewpoint-based restrictions.
 - tailor any conduct and behavior restrictions to the mission of the library.
 - ensure any content-based restrictions satisfy the strict scrutiny standard.
 - reasonably establish any time, place, and manner restrictions consistent with mission of library.
 - ensure compliance with applicable criminal and non-discrimination laws.
 - comply with all public record laws.
- When consistently enforced, the policy will legitimize the actions of staff consistent with board intent as specified in the mission.

POLICY COMPONENTS

- The policy will state the mission of the library and justify establishing regulations for meeting room use consistent with that mission to demonstrate a compelling state interest.
- This mission will typically promote three guiding principles: patron right to access information, staff obligation to operate the library, and board obligation to establish a safe library setting.
 - Example: The Mosaic Public Library serves each member of the community in a welcoming and secure setting as they pursue personal lifelong learning goals.
- The policy will include a reference to the staff's role and authority in:
 - managing the library space and specific meeting rooms or reservable areas;
 - directing individuals using the facility,
 - establishing a process to reserve areas of the space and times when it can be used,
 - enforcing the policy consisting with the mission.
- A patron conduct policy may include a reference to how personal conduct in the library area can be redirected or restricted if disruptive to other patrons.

POLICY PROVISIONS - EXAMPLES

Library Meeting Rooms and Display Cases

- The Library shall establish methods for individuals or groups to utilize meeting rooms, display cases, and similarly designated spaces in a manner which honors the Library's mission to provide a safe and welcoming setting for each Library employee and patron and to protect Library property, facilities, and equipment.
- The access to and utilization of meeting rooms, display cases, and similarly designated spaces shall comply with applicable laws, regulations, and policies related to patron and employee rights, public records, and Library operations.
- Library staff are not involved in the organization, management, or execution of the meeting of the event.
- The Director or designated employee shall establish methods for identifying, establishing, and reserving meeting rooms, display cases, and similarly designated spaces.
- CUSTOMIZE: List of rooms, cases, and areas; when and how areas can be reserved; additional equipment in rooms; expectations for specific areas.
- Any damage to Library property resulting from use of a meeting room, display case, or other similarly designated area will be invoiced to the reserving individual or group with expectation for payment within 30 days.
- The reserving individual or group may arrange furniture or temporary displays in a room to meet specific meeting or event needs but may not permanent alterations to the room, equipment, or fixtures.
- The Director or designated employee is authorized to interpret and implement this policy, revoke or cancel reservations, or resolve grievances or disputes about the suitability for an event or item to be held in a meeting room, display case, and similarly designated space.
- Reservation of a meeting room, display case, and similarly designated space is a matter of public record subject to disclosure to third parties consistent with Montana law.

POLICY PROVISIONS - EXAMPLES

Library Meeting Rooms and Display Cases, continued

- Use of a meeting room, display case, and similarly designated space shall:
 - not be illegal or obscene as defined by applicable ordinances, regulations, or laws
 - comply with all applicable library conduct and behavior policies.
 - not place event attendees, patrons, staff, library property or the property of others at risk of harm or injury through unreasonable reckless or dangerous behavior.
 - not interfere with or otherwise disrupt the library's operations or library staff's duties or obligations regarding operation of the library.
 - be consistent with all library staff directives.
 - be with the understanding the room or space is a publicly accessible area and user may not exclude members of the public from the event or meeting.
 - comply with applicable building, safety, and fire codes as interpreted and applied by library policy and staff.
 - not include any admission fees, sale of goods or services, or other commercial enterprise unless associated with charitable fundraising for the benefit of Library.

ADDITIONAL TYPES OF USE

Considerations when Renting the Library for Private Events

- Formal rental agreement specifying times, rate, permissions and obligations
- Special event insurance coverage secured by the lessee
- Comparative negligence and assumption of risk
- Alcohol use, marijuana use, food service, and gambling consistent with state regulation and local ordinance
- Fees for cleaning, security, and other additional staffing requirements
- Application of patron conduct policy

Considerations when Displaying Private Items for Sale

- Applicability of patron conduct and displays policy regarding obscenity
- Avoiding viewpoint restrictions once forum has been established
- Methods of sale not involving library staff
- Expected donation to Library or foundation
- Comparative negligence and assumption of risk

MONTANA LIBRARY ASSISTANCE HELPLINE



THANK YOU

Contact Information:

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