

Legal

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU
444-2026

MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: KAREN STREGE
Montana State Librarian

FROM: JIM SCHEIER JS
Assistant Attorney General

RE: Library Fund Questions

DATE: September 1, 1998

Your August 24 letter asks two questions regarding funds for the operation of public libraries.

Question One

Your first question is whether public libraries may have custody of the library fund and function as the library's bookkeeper. The answer is no. Montana Code Annotated § 22-1-309 states that the library board of trustees "shall have exclusive control of the expenditure of the public library fund [emphasis added]." The public library fund is authorized by Montana Code Annotated § 22-1-304, which empowers the governing body of a city or county that has established a public library to levy taxes to maintain adequate public library service. The proceeds of the tax constitute a separate fund known as the "public library fund." Montana Code Annotated § 22-1-304(4). Montana Code Annotated § 22-1-304(5) provides:

No money shall 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 [emphasis added].

Subsection (5)'s requirement that money from the public library fund be disbursed by the city or county treasurer supports the conclusion that the treasurer, rather than the library, has actual custody of the fund.

Karen Strege
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Question Two

Your second question is whether the city or county may charge the library fund a fee for administering the fund. The answer is again no. The proceeds of the tax levy for library services, known as the public library fund, "shall not be used for any purpose except those of the public library." Montana Code Annotated § 22-1-304(4). No money shall be paid out of the public library fund "except by order or warrant of the board of library trustees." Montana Code Annotated § 22-1-304(5). Thus, the city or county treasurer may not take money from the fund, as only the library has that authority.

Library trustees are granted authority to administer the library in a manner "largely independent of city or county control." 42 Op. Att'y Gen. No. 98 (1988). The local governing body's only role in library budget matters is the "purely ministerial" role of assigning a tax levy amount, within the statutory maximum, sufficient to satisfy the library's budget needs. 41 Op. Att'y Gen. No. 91 (1986). The city or county treasurer may not deduct an "administrative fee" from the public library fund to pay for the performance of their ministerial duties related to the fund.

jms/slj



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To: Public Library Directors

From: Karen Strege^{KS}, State Librarian

RE: Questions @ the Library fund

Date: April 20, 1999

The State Library has received the following questions from librarians and trustees around the state. This letter is intended to give you general guidance regarding these matters.

1. Can the public library have custody of the library fund and function as the library's bookkeeper?

The library board of trustees has the exclusive control of the expenditure of the public library fund. This means that the city or county treasurer cannot spend the money in the public library fund without order of the library board. However, according to MSL's attorney, the library cannot have physical custody of the library fund and act as bookkeeper.

2. Can the city or county charge the library fund a fee for administering the fund?

No, the city or county cannot pay itself an administrative fee unless the library board authorizes this fee. The library board is the only body allowed by law to authorize the expenditure of the library fund.

3. Can the library deposit state aid or interlibrary loan reimbursement funds in the Foundation's or the Friend's account?

No, all public funds, from whatever source -- state, local, or federal -- must be deposited in the library's account. State aid funds may also be placed in a library depreciation fund if the library board plans to use them for purchasing property, capital improvements or equipment. State aid funds or reimbursement for interlibrary loans can not replace local funds.



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October 1, 1998

Paul C. Stahl
Chairman, Board of Trustees
N. Valley Public Library
208 Main Street
Stevensville, MT 59870

Dear Mr. Stahl:

Recently you asked me if your library may have custody of the library fund and function as the library's bookkeeper. I asked our agency attorney and he said "no" based on his reading of the statutes. The Library Board has exclusive control over the expenditure of the public library fund as set forth in section 22-1-309, MCA. But section 22-1-304, MCA requires that money for the public library funds be disbursed by the city or county treasurer. This requirement supports the conclusion that the treasurer, rather than the library, has actual custody of the fund.

I also asked if the city or county may charge the library fund a fee for administering the fund. Our attorney answered "no." Because the library board has exclusive control over the library fund, the city or county treasurers may not take money from the fund, as only the library has that authority.

I am also sending you a copy of my letter to Patti Jo regarding the PERS issue.

Yours truly,

KAREN STREGGE
State Librarian

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cc: Patti Jo Thomas
Darlene Staffeldt, Program Manager

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Board Accounting
R. ...