

Ethics Question Regarding Asbestos Removal

Initial question from librarian: As you may recall, a donor deeded her property to the county for use as the new Library. With it being as old a building it is, we are at the consensus now (both Board of Trustees AND Foundation, who is doing the fundraising for the project) of being able to save some of the pilings on the building but the rest will be removed and a new fabricated building put in its' place. But....of course, the building has asbestos that will need to be removed.

According to one of our Commissioners, if we were to deed it BACK to the donor, removal of the asbestos could be as easy as putting it in a dumpster as a private citizen can remove asbestos any old way; a public or governmental entity has to jump through hoops. The Commissioner offered to use volunteer labor to do so, but - and I said this term to him - this kind of sounds "shady" and not above board. Re-deed it back to her so that asbestos removal can be done quickly and without regulations?? She no longer has insurance on the property as it is now county property - would she be required to re-insure the property before those of us volunteering came on the property? The Commissioner re-assured both the Board AND the Foundation that this is done all the time and would not be illegal, but of course we are all questioning it and wondering if something like this would jeopardize the Foundation's status and jeopardize any future grants.

Responses from Tracy Cook – April 28, 2011

First my disclaimer. I am not a lawyer, so this should not be considered legal advice. You might want to talk to an attorney that you can trust about this issue. S/he might have some very good advice for you in this situation.

As I mentioned earlier I will have to investigate the private citizen/asbestos removal issue, but I do have some general comments about this situation.

There is a code of ethics law in Montana (<http://data.opi.mt.gov/bills/mca/2/2/2-2-104.htm>). It doesn't address issues like this, but there is meeting the letter of the law and meeting the intent of the law. I would recommend choosing the higher road in this case and meeting the intent of the law which is about protecting public trust. I think all of us have seen articles about people doing shady things that might be okay in theory, but really aren't when you shine a light on the subject. There are plenty of examples of people not choosing to do the right thing. This is an opportunity for you, the board, and others to do the right thing. If I lived in Big Sandy and I found out about something like this I would be upset. Asbestos is a carcinogen, and the people who live in Big Sandy deserve to have it taken care of in a way that doesn't endanger their lives. But beyond that there is an expectation that the library board and local government officials would choose to do the right thing. Even if this is completely legal it does seem questionable, so I think your instinct is correct. Maybe no one would find out about this issue, but if it appeared on the front page of the paper could you, your board, and the foundation live with the consequences? Would you be okay with seeing something like this in the paper or on the Internet?

I will have to research the insurance issue, but my initial thoughts are that Janice would have to re-insure it and/or assume the liability that comes with volunteers being in the building. I'm not a 100% sure, but I don't think the county's insurance would cover anything if one of you should get hurt in a private building. Insurance companies don't seem to be very comfortable with things like that.

Okay here's what I found for asbestos. The Department of Environmental Quality handles asbestos projects. Here is a link to their website which gives a lot of information about what is required as well as links to the law: <http://deq.mt.gov/Asbestos/default.mcp>

In addition MCA 75-2-502 seems to imply that individuals must comply with these rules. Here's the link to the part contents which has that law as well as others that address asbestos removal:

http://data.opi.mt.gov/bills/mca_toc/75_2_5.htm It seems like there is an expectation that private citizens follow the same rules as others. It also looks like the Department of Environmental Quality will work with you and try to streamline the process as much as possible, so I don't think it is an impossible task to do asbestos cleanup.

This might make the insurance question moot. However I did look at a couple of things and decided that the best option would be to talk to the county's insurance agent. They would be the one who could give you the most accurate answer about whether or not the owner would need to reinsure the building if it were given back to her.