

Can Libraries Retain Overdue Fees and other Fines?

Initial question: Many of the public libraries in the state collect fines for overdue books and fees for various services – like photocopying, printing, faxes, and sometimes interlibrary loan postage. According to the Codes, is there a difference as to whether or not these monies go into the General Fund of the city or county versus back into the library budget depending upon whether the library is funded from a Special Library Fund (22-1-304) or the all-purpose mill levy (7-6-4451)?

Response from Jim Scheier, January 12, 2012: In the March 19, 1990 memo to Sheila Cates, I noted that Mont. Code Ann. § 7-6-4133 specifically applied to cities and towns operating under the all-purpose mill levy authorized by Mont. Code Ann. §§ 7-6-4451 to 4455. Mont. Code Ann. § 7-6-4133(1) provided as follows:

Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges, and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses, and any other operation supported in part or whole from an appropriation of the all-purpose levy and not otherwise provided by law.

In the memo to Sheila, I concluded that cities and towns operating under the all-purpose levy were required to deposit money received from library fines and other fees into the general fund, but that there was no similar requirement for libraries funded through Mont. Code Ann. §§ 22-1-301 to 22-1-331.

Since that memo was written, Mont. Code Ann. § 7-6-4133 has been repealed. However, the statutes authorizing cities and towns to operate under the all-purpose levy remain in effect. (Mont. Code Ann. §§ 7-6-4451 to 7-6-4455). And, the statutes providing for creation and administration of public libraries under Title 22 remain in effect. (Mont. Code Ann. §§ 22-1-301 to 22-1-331). Mont. Code Ann. § 22-1-304(3) provides that the proceeds of the tax levy authorized to support a public library constitute a separate fund called the public library fund, to be used only for library purposes. Money may only be paid out of the fund by the treasurer of the city or county pursuant to order or warrant of the library board of trustees. Mont. Code Ann. § 22-1-304(4).

Under the existing statutes, it appears that charges and fees collected by libraries funded through the all-purpose levy should continue to be deposited into the general fund of the city or town, even though Mont. Code Ann. § 7-6-4133 is no longer in effect. The city or town that imposes the levy has ultimate control over the amount of the annual mill levy, depending on the funding requirements of the various governmental services that will be supported by the levy. Therefore, it makes sense that any money collected by libraries or by any other governmental operation supported by the all-purpose levy should go into the general fund to enable the city or town to determine an appropriate levy in following years. There is no provision in the all-purpose levy statutes that would authorize a library funded under that levy to retain overdue book fines, copying fees, and other charges.

However, in my opinion charges and fees collected by libraries funded through the tax levy authorized by Mont. Code Ann. § 22-1-304 may be deposited into the public library fund, a separate fund that is under the control of the library board of trustees. It makes sense that fines, fees, and other charges assessed by the library pursuant to its operation should be paid into the specific fund that was established for public library purposes.