

Guidelines for City Libraries Applying for County Wide Levies

Initial question: In the case where a city library wishes to seek a county levy, must the library first enter into a contract with the county either making it a county library or creating some other type of legal relationship or obligation with the county before seeking the levy?

Response from Jim Scheier, January 31, 2012: Jennie,

This email responds to your January 23rd emailed question:

In the case where a city library wishes to seek a county levy, must the library first enter into a contract with the county either making it a county library or creating some other type of legal relationship or obligation with the county before seeking the levy?

Attached to your email is a January 11, 1990 memo to me from Sheila Cates, describing a situation where a city library had received “some funding” from the county. The city library wanted to know whether it had to become a city-county library according to Montana Code Annotated § 22-1-315. Since there was no contract in place between the library board and the county commissioners, Sheila believed that the city library would not have to become a city-county library, and that the funds received from the county could be treated as grant funds.

In a January 16, 1990 memo responding to Sheila’s questions, I noted that a city library may assume the functions of a county library (as authorized by Montana Code Annotated § 22-1-315), or a city and county may establish a joint city-county library as authorized by Montana Code Annotated § 22-1-316. In both cases, however, it would be necessary for the respective parties to enter into a contract to accomplish those objectives. I stated my opinion that in the absence of a contract a city library does not become a city-library simply because it has accepted money from the county. I noted that pursuant to Montana Code Annotated § 22-1-309(8) a library board of trustees may accept gifts, grants, and donations of “personal property,” which includes money. Thus, the money received from the county could be treated by the library as a gift, grant, or donation, to be expended for the specific purpose for which it was paid.

After reviewing that opinion and the relevant statutes, I believe the opinion is sound. However, neither Sheila’s memo nor my response considered or discussed the facts assumed in your question – that a city library is seeking a county tax levy. Montana law regarding creation and funding of public libraries provides the information necessary to answer your specific question.

Under title 22 a public library may be created in one of several ways:

1. The governing body of a city or county may pass a resolution creating a library. Mont. Code Ann. § 22-1-303(1).

2. A petition signed by at least 10% of the resident taxpayers of a city or county, requesting establishment of a library, may be filed with the governing body of the city or county. The appropriate governing body may then schedule and provide notice of a meeting at which it may by resolution establish a library. Mont. Code Ann. § 22-1-303(2).

3. A petition signed by at least 5% of the resident taxpayers of a city or county, requesting an election on the question of whether a library should be established, may be filed with the governing body of the city or county. The appropriate governing body then submits the question to the electorate at either the next general election or at a special election, depending on the specific request in the petition and the number of petitions filed. Mont. Code Ann. § 22-1-304(3).

Whichever method is employed, the result is the creation of either a city library or a county library. A tax levy to fund the library is likewise authorized to be levied by the governing body of a city or county, depending on whether the funding is for a city or county library. Mont. Code Ann. § 22-1-304. A board of trustees to administer the library is appointed by either the mayor and city council or commission (for a city library) or the presiding officer of the board of county commissioners and the board (for a county library). Mont. Code Ann. § 22-1-308.

Thus, it is clear that the statutes contemplate the separate creation, funding, and administration of city library or a county library. While Montana Code Annotated § 22-1-312 states that library boards and local political subdivisions are “empowered to cooperate, merge, or combine in providing library service,” the cooperation or merger of city and county libraries is specifically authorized by Montana Code Annotated §§ 22-1-315 and 22-1-316, discussed above, both of which require a contract.

Therefore, in my opinion a city library may only seek a county tax levy pursuant to a contractual arrangement whereby the city library either assumes the functions of a county library (§ 22-1-315) or establishes with the county a joint city-county library (§ 22-1-316).

Your emailed question notes that Harold Blattie from the Montana Association of Counties believes a county can not be “forced” to include an additional levy for the city library on the ballot. I believe he is correct, and that the only circumstances under which that would be authorized would be as discussed above.

On the other hand, regarding the question posed by Sheila Cates in January 1990, in my opinion there would be no requirement for a contract to exist between the city library and the county to authorize the city library to simply accept money from the county. If a county chooses to provide funding to a city library, in the absence of a contract it creates no obligation on the part of the city library other than to treat the money as a

grant and use the funds for the specific purpose for which they were paid, as required by Montana Code Annotated § 22-1-309(8).

I hope this addresses your questions. If you have additional questions or need more information let me know.

Jim