

## Open Meeting Law and Notice of Vote

Original questions: In short, federations receive funding from the Legislature through the State Library. In order to receive funding the Federations must submit plans of service to the Commission as described in the linked ARM:[http://msl.mt.gov/For\\_Librarians/For\\_Public\\_Librarians/Library\\_Law/Laws\\_and\\_Rules/lawsdetail.asp?lw=231](http://msl.mt.gov/For_Librarians/For_Public_Librarians/Library_Law/Laws_and_Rules/lawsdetail.asp?lw=231)

State Library staff and I have been working for several months with the Sagebrush Federation as they work to adopt changes to their bylaws. Their current bylaws can be found here: [http://msl.mt.gov/For\\_Librarians/For\\_All\\_Librarians/Federations/Federation\\_Notebook/bylaws/sagebrush.pdf](http://msl.mt.gov/For_Librarians/For_All_Librarians/Federations/Federation_Notebook/bylaws/sagebrush.pdf).

A previous attempt to revise the bylaws in February was found to be in violation of the current bylaws on a number of points and led to much frustration within the federation. The chair has now sent revised bylaws and a ballot to vote on their adoption to the voting members of the Federation by mail. Copies of that documentation is attached for your review. These revisions were not presented in a regular meeting of the federation as is required by their current bylaws (Article VII). Further, the proposed bylaws state in the heading of the document that the revisions were drafted at a meeting on June 9<sup>th</sup>, however the minutes from that meeting do not reflect that the bylaws were discussed (see also attached). Not reflecting this discussion in the minutes seems to be in violation of [MCA 2-3-212 \(2\)\(c\)](#). Do you agree? More concerning to me is the question of whether or not this call for a vote via mail, without discussion of the recommendations, and without allowing public participation to witness the vote, is a violation of Montana's open meeting law.

Does this vote violate the open meeting law? If so, as the funding source for this federation, if we are aware that they are violating open meeting laws, can we and/or should we withhold their funding until the matter is resolved?

*Response from Jim Scheier, July 10, 2012*

This email responds to the questions you raised in your July 5<sup>th</sup> email, regarding the Sagebrush Federation (Federation).

Your questions revolve around actions taken by the Federation in relation to an effort to revise the Federation's bylaws. A June 29, 2012 letter to representatives of the Federation enclosed a copy of the revised bylaws and a ballot for the Federation's trustees to vote on the bylaws. The letter represents that the revised bylaws were written by the "Bylaws Committee" during "Sagebrush Federation 2012 Work Day" on June 9, 2012. In addition, the heading of the revised bylaws indicates that it is a draft "revised June 9<sup>th</sup>, 2012."

As your email points out, the minutes of the June 9<sup>th</sup> “work day” meeting do not reflect that the bylaws were considered or discussed during that meeting. Your email also notes that the revisions do not appear to have been presented in a regular meeting of the Federation, which is required by Article VII of the existing bylaws. The existing bylaws (Article IV) refer to two meetings per year, one in the fall and one in the spring.

Your email asks whether the absence in the minutes of any reference to the proposed revision to the bylaws being discussed at the June 9<sup>th</sup> meeting violates Mont. Code Ann. § 2-3-212(2)(c). You also ask whether the vote solicited in the June 29<sup>th</sup> letter violates the open meetings law. Finally, you ask whether, if the Federation violated the open meetings law, the State Library may withhold funding for the Federation until the open meetings issues are resolved.

The Federation is clearly a public or governmental body subject to the open meetings laws in Title 2, chapter 3, part 2 of the Montana Code Annotated. Title 2, chapter 3 is the Public Participation in Governmental Operations chapter of Title 2. The actions of the Federation *may* have failed to comply with the provisions of Mont. Code Ann. § 2-3-103, which requires adequate notice and the right to public participation before a final agency action that is of significant interest to the public. An agency may not take action on a matter unless notice of the matter was included on the agenda for the meeting and public comment was allowed on the matter. Any public comment must be incorporated into the official minutes of the meeting. Mont. Code Ann. § 2-3-103(1). An “agency” is defined as “any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts.” Because a federation may contract with other federations, libraries, or the state library (Mont. Code Ann. § 22-1-402(5)), I think it’s likely that a court would find that a federation is subject to the requirements of Mont. Code Ann. § 2-3-103.

I haven’t seen an agenda for the June 9<sup>th</sup> Federation work day, and I don’t know whether sufficient public notice of the proposed revision of the bylaws was provided. If appropriate notice was not provided, it appears that this may have failed to comply with Mont. Code Ann. § 2-3-103. In addition, if the revisions to the bylaws were proposed, discussed, or decided during the June 9<sup>th</sup> work day, that should have been included in the minutes. As you pointed out, the failure to include that information in the minutes may very well have violated Mont. Code Ann. § 2-3-212(2)(c).

Moreover, if sufficient notice and opportunity for public participation was not provided, any action taken by the Federation to revise the bylaws through a mail ballot could potentially be set aside by a court if challenged. See Mont. Code Ann. § 2-3-114.

Your final question is whether the State Library may withhold funding to the Federation pending resolution of any open meetings issues. I don’t believe the statutes or rules would permit the State Library to do so. Mont. Code Ann. § 22-1-413 authorizes the State Library Commission to receive and administer the appropriation for state funding to the federations. The Commission allocates the funding according to formulas for

distribution as established in rules adopted by the Commission. Federations are required to submit annual plans for the expenditure of the funds they receive, and report annually regarding the progress of the various projects for which the funding was received. The Commission has authority to approve a federation's plan of service and to approve or deny funding for specific components of a plan of service. ARM 10.102.5102(2). The Commission may disapprove a plan of service only if it was not prepared according to the procedures and forms established by the Commission, or if the plan does not address the purposes or priorities established by the Commission. ARM 10.102.5102(2)(c). I don't see any authority for the Commission to withhold or deny funding to the Federation pending resolution of any issues regarding whether or not the Federation complied with open meetings statutes.