

**ATTORNEY GENERAL**  
**STATE OF MONTANA**

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Attorney General



Department of Justice  
215 North Sanders  
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VOLUME NO. 54

OPINION NO. 7

LIBRARIES - The Library Board has sole discretion to determine how to use unspent funds in the library reserve;

LOCAL GOVERNMENT - The Library Board does not have the authority to require the local governing body to levy a certain number of mills in support of the library;

LOCAL GOVERNMENT - The local governing body is not required to continue levying a particular number of mills in perpetuity;

MONTANA CODE ANNOTATED - Sections 7-6-2501, -4001, -4431(3), -4035, -4036, (1)(b), (c), 15-10-420, (1)(b), 22-1-301, -304, (1), (3), (4), -308, -309, (6), -310;

MONTANA CODE ANNOTATED (1999) - Section 22-1-304;

OPINIONS OF THE ATTORNEY GENERAL - 53 Op. Att'y Gen. No. 2 (2009), 49 Op. Att'y Gen. No. 16 (2002), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD:
1. While the City and County have the inherent discretion not to levy mills, Mont. Code Ann. § 22-1-309 clearly provides that the Library Board alone has the discretion to determine how to use unspent funds in the library reserve.
  2. A library board no longer has sole discretion in determining the number of mills that must be levied for support of the library because Mont. Code Ann. § 7-6-4035 clearly provides that the proposed budget and mill levy for each board is subject to approval by the local governing body. Therefore the Library Board cannot require the City or County to levy a certain number of mills in support of the library.
  3. Because the City and County have discretion to determine the number of mills necessary, they do not have to levy a particular number of mills in perpetuity.

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Mr. Bruce Becker  
Livingston City Attorney  
414 East Callender  
Livingston, MT 59047

Dear Mr. Becker:

[P1] You have requested my opinion concerning several questions which I have rephrased as follows:

1. Where unspent appropriations are available, can these funds be used to reduce the tax levy, i.e., can a local governing body appropriate unspent monies (reserves) from the prior fiscal year to partially fund the Livingston/Park County library's budget request for a future fiscal year?
2. Can the Library Board require the City or County to levy an inflationary floating mill?
3. If the City or the County can be required by the Library Board to levy a particular millage, is this not an unconstitutional delegation of the legislative power to tax to the appointed Library Board?
4. Once the City of Livingston has levied a certain number of mills for the library, must the City levy that same number of mills in perpetuity, or does it have the discretion to eliminate mills in excess of those required by the interlocal agreement with Park County?

[P2] Your letter indicates that in 2001 the City of Livingston (City) and Park County (County) entered an interlocal agreement to fund a library. Although in 2001 the legislature eliminated the mill limits found in Mont. Code Ann. § 22-1-304 (1999), the interlocal agreement continued to use limitations found in the previous version of the statute, which were five mills in the county and seven in the city. Thus, in the interlocal agreement the County agreed to levy five mills, with 2.5 of those being voter-approved on all property in the County, including property in the City. The City agreed to levy seven mills. The agreement also provided that both the City and County would levy additional mills for the annual increase provided for in Mont. Code Ann. § 15-10-420. Accordingly, last fiscal year, the City levied 9.23 mills, not including the 2.5 county mills. The County levied 5.7 mills, which included the annual increase provided for in Mont. Code Ann. § 15-10-420. Of the 9.23 City mills, 7.92 represent the original 7 mill

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levy and the annual increases under Mont. Code Ann. § 15-10-420. The remaining 1.31 mills are in excess of the terms of the interlocal agreement.

[P3] Your letter further indicates that the interlocal agreement is currently under review. A proposal to change the agreement calls for the County to assess five mills--.7 mills less than currently levied by the County--and the City to assess seven mills--2.3 mills less than assessed in Fiscal Year 2011-2012. Because, as you acknowledge, this would result in less tax revenue, the City is proposing to reappropriate existing unspent funds in the library reserves to meet the library's budget needs.

[P4] The Library Board objects to this proposal because it would cut the library's annual funding by \$50,000, or 12.5 percent, and would eliminate funding to cover the cost of inflation. The Library Board argues that it is the sole duty of the Library Board to establish the library's budget needs, pursuant to Mont. Code Ann. § 22-1-309(6), which provides:

The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(6) *prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.*

(Emphasis added.)

[P5] The Library Board also relies on this office's holding in 41 Op. Att'y Gen. No. 91 (1986), which concluded, "A board of county commissioners does not have the authority to refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by county library trustees." The Library Board also notes that opinions from this office in 1999 and 2002 further confirm that it is the exclusive duty of the Library Board to determine the library budget and set the necessary mill levies to meet that budget, provided it falls within the parameters of Mont. Code Ann. § 15-10-420.

[P6] In 48 Op. Att'y Gen. No. 3 (1999), this office considered the authority of a board of county commissioners to alter a library board's proposed budget where the library is funded under a *general* levy, as opposed to the library-specific levy provided for in Mont.

Code Ann. § 22-1-304(1). In noting the expansive authority provided to library board trustees to control library expenditures and set the library budget, this office concluded that the county commission did not have statutory authority to modify the library budget, regardless of the fact that the library was funded through a general levy.

[P7] Similarly, in 49 Op. Att’y Gen. No. 16 (2002), this office considered whether the library board had the authority to require the county commission to levy a specific number of mills to fund the library budget as submitted by the library board. Although noting some changes had been made to the statutory scheme during the 2001 legislative session with the passage of the Local Government Budget Act (see Mont. Code Ann. § 7-6-4001), this office nonetheless concluded that the county commissioners were still “generally obligated” to fund the library board’s budget, subject only to the limitations provided for in Mont. Code Ann. § 15-10-420.

[P8] By 2009, however, in 53 Op. Att’y Gen. No. 2, I examined the changes enacted by the Local Government Budget Act more directly, specifically by considering whether a county governing body was required to adopt the hospital trustees’ proposed budget without changes. There I reached a result that appeared to conflict with the conclusion reached in 49 Op. Att’y Gen. No. 16 (2002). Specifically, I determined that the local governing body was *not* obligated “to fund the budget proposed by the county hospital district trustees without change.” My conclusion was based on the changes made to the statutory scheme by the Local Government Budget Act. It was also based on the acknowledgment that requiring a local governing body to simply adopt a local board’s proposed budget would usurp the governing body’s ability to set funding priorities for *all* government programs and would make the local board’s budget, in effect, a “superior priority” at the expense of other important government functions.

[P9] Furthermore, I noted:

I am aware that other opinions of this office have held that a local governing body is obligated to fund the budget of a public library as proposed by the library trustees without change. 49 Op. Att’y Gen. No. 16 (2001) [The original opinion incorrectly cited this as a 2001 opinion. It is actually from 2002]; 48 Op. Att’y Gen. No. 3 (1999); 41 Op. Att’y Gen. No. 91 (1986). The soundness of the holdings in these opinions is an issue not squarely presented by your request. For that reason, I express no opinion here regarding the effect of the 2001 amendments to the local government budget laws to the funding of a public library, leaving those questions for consideration when this office receives a request that presents those issues for review.

53 Op. Att’y Gen. No. 2, ¶ 16. Your request requires me to consider this previously unanswered question.

I.

[P10] Your first question concerns whether the City and County may reduce the tax levy (and, thereby, the library’s funding) and, instead, require that the library’s budget be funded through previously unspent funds in the library reserves.

[P11] A local governing body clearly has the authority to determine whether to levy taxes. See, e.g., Mont. Code Ann. § 7-6-2501. This is one of the most fundamental powers of government. Necessarily, a governing body also has the authority to determine *not* to tax. For example, as stated in Mont. Code Ann. § 7-6-4431(3): “An election is not required *for a governing body to impose less than the maximum number of mills* or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b).” (Emphasis added.)

[P12] However, while the City and County can determine how much to levy in taxes, they cannot exercise control of the library reserve funds. Montana Code Annotated § 22-1-309 clearly provides: “The library board of trustees shall have *exclusive control* of the expenditure of the public library fund . . . .” (emphasis added). Montana Code Annotated §§ 22-1-304(3) and (4) further speak to the exclusive authority of the Library Board and use of funds in the library reserve:

(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(4) Money may not 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.

[P13] Therefore, while the City and County have the authority to decrease the number of levies for support of the library, they do not have the authority to direct the Library Board in how to use the library reserve fund.

II.

[P14] Your second question directly confronts the authority of local boards to require local governing bodies to fund the budget as requested. Specifically, you ask whether the Library Board, by adopting a budget, can force the City and County to levy the

inflationary floating mill as provided for in Mont. Code Ann. § 15-10-420 in order to meet the Library Board's budget. The Library Board maintains the answer is yes and points to the aforementioned opinions of this office as "clearly and unambiguously" providing that the Library Board has the statutory authority over the library budget.

[P15] It should first be noted that previous opinions of this office have interpreted Mont. Code Ann. § 15-10-420 not merely to be permissive, as you indicate, but also as providing a cap on mill levies for a given year. 53 Op. Att'y Gen. No. 2, ¶ 2. That is, § 15-10-420 provides an *upper limit* on the tax revenue that may be raised in a given year, not a guaranteed minimum. This reading of § 15-10-420 is consistent with other provisions of the Montana Code. See, e.g., Mont. Code Ann. § 7-6-4431 ("The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects *in excess of the levy allowed by 15-10-420* under the following conditions . . . ." (emphasis added)).

[P16] Local government budget authority was significantly changed under the Local Government Budget Act, as well as other statutory provisions enacted during the 2001 legislative session. Prior to that, funding of public libraries was largely governed by Mont. Code Ann. § 22-1-304, which set specific limits on mill levies:

*Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service. The special tax levy that may be levied by the governing body of a county may not exceed 5 mills on the dollar on all property in the county. The special tax that may be levied by the governing body of a city may not exceed 7 mills on the dollar on all property in the city.*

Mont. Code Ann. § 22-1-304 (1999) (emphasis added).

[P17] In 2001, the legislature removed the mill levy limits in Mont. Code Ann. § 22-1-304. The present version of the statute now provides more simply:

*Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.*

[P18] This, however, is not the only change the 2001 legislature made that is germane to funding of public libraries. If it were, a library board's authority to demand unlimited public funds at the expense of other important government programs would be left unchecked. Instead, the legislature also enacted Mont. Code Ann. § 7-6-4035, which provides in relevant part, "The proposed budget and mill levy for *each board, commission, or other governing entity are subject to approval by the governing body.*" (Emphasis added.)

[P19] The legislature also enacted Mont. Code Ann. § 7-6-4036, which provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after the approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-4034.

Mont. Code Ann. § 7-6-4036(1)(b)-(c).

[P20] Thus, the 2001 legislature in effect upended the funding of public libraries. It went from a scheme in which library boards had complete control over the library budget, but the budget could not exceed the mill limits provided in Mont. Code Ann. § 22-1-304, to a scheme in which there were no mill limits in Mont. Code Ann. § 22-1-304, but the library board's proposed budget was subject to approval by the local governing body.

[P21] As I indicated in 53 Op. Att'y Gen. No. 2 (2009), requiring approval of a proposed budget of a local board (in that case, hospital districts) by the local governing body, as Mont. Code Ann. § 7-6-4035 does, would be a meaningless exercise if the local board could still require the governing body to approve its budget proposal without change. See 53 Op. Att'y Gen. No. 2, ¶ 12 (2009). This logic applies with equal force to library boards. And, as stated in 53 Op. Att'y Gen. No. 2, it is presumed the "legislature does not pass meaningless legislation." 53 Op. Att'y Gen. No. 2, ¶ 12 (citing Peris v. Safeco Ins., 276 Mont. 486, 492, 916 P.2d 780, 784 (1996)).

[P22] The Library Board correctly points to previous opinions of this office which conflict with my conclusion in this matter. However, two of the three opinions relied upon by the Library Board were issued prior to the changes to local government finance enacted by the 2001 legislature. To the extent those opinions conflict with the Local Government Budget Act and other provisions of the Montana Code, they are inapplicable to this question. It is worth noting, however, that one of those opinions acknowledged the exact concern I have expressed here and in 53 Op. Att'y Gen. No. 2 (2009), concerning the Library Board's authority to require a governing body to fund the library budget as requested without change. In 48 Op. Att'y Gen. No. 3 (1999), this office

acknowledged that interpreting the statutes at issue to allow a library board to force the governing body to adopt the board's budget beyond the mill levy limit at the time, "would allow library trustees to adopt a budget that could assume the entire general fund levy."

[P23] It should also be noted that this opinion is consistent with the Montana Supreme Court's holding in Trustees of Butte-Silver Bow Public Library v. Butte-Silver Bow County, 2009 MT 389, 353 Mont. 326, 221 P.3d 1175 ("BSB Public Library"), in a couple of significant respects. First, the Court in that matter was dealing largely with the question of whether the Butte-Silver Bow Public Library was, in fact, a "public library" under Mont. Code Ann. § 22-1-301. The county argued that because the library was not a "public library," the library "cannot be regulated under this statutory scheme because the Board is not a board of trustees within the meaning of § 22-1-308, MCA (2007)." BSB Public Library, ¶ 14. Accordingly, the county sought to exercise the authority found at Mont. Code Ann. § 22-1-310 to "appoint and set the compensation of the chief librarian . . ." BSB Public Library, ¶ 16 (quoting Mont. Code Ann. § 22-1-310). This authority, otherwise, belonged to the library board itself.

[P24] The Court concluded that the library met the definition of a "public library" and, in so doing, found that the "plain language" of Mont. Code Ann. § 22-1-310 "grants the Board, and not BSB, the authority to determine the salaries and compensation of Library employees. Notably, however, the opinion never touched on the question posed here of whether a library board's proposed budget is subject to approval by the local governing body as provided for in Mont. Code Ann. § 7-6-4035. Indeed, the Court never even cited to Mont. Code Ann. §§ 7-6-4035 or -4036 at all.

[P25] Thus, this opinion and the Montana Supreme Court's opinion in BSB Public Library are consistent: while this opinion holds that the library board's proposed budget is subject to approval by the local governing body, as provided for in Mont. Code Ann. § 7-6-4035, the Supreme Court's opinion in BSB Public Library holds that the *details* of that budget, such as fixing salaries and compensation and prescribing duties of employees, is the sole discretion of the library board, pursuant to Mont. Code Ann. § 22-1-310.

[P26] Finally, to the extent 49 Op. Att'y Gen. No. 16 (2002), failed to address Mont. Code Ann. §§ 7-6-4035 and -4036, its analysis is incomplete and it is inapplicable to the questions presented here.



III.

[P27] Due to my disposition of your second question, your third question is rendered moot. However, it should be noted that under both Mont. Code Ann. §§ 15-10-420 and 22-1-304, it is the “governing entity” or “governing body” that levies the tax, not the library board. Therefore no unconstitutional delegation of the legislature’s taxing authority exists. This same conclusion has been reached in previous opinions of this office. See 53 Op. Att’y Gen. No. 2, ¶ 6 (2009).

IV.

[P28] Your final question is answered in the same manner as the first, by reference to Mont. Code Ann. § 7-6-4431(3) which states, “An election is not required for a governing body to impose less than the maximum number of mills or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b).” Accordingly, the City is not obligated to continue to levy a particular number of mills in perpetuity.

THEREFORE IT IS MY OPINION:

1. While the City and County have the inherent discretion not to levy mills, Mont. Code Ann. § 22-1-309 clearly provides that the Library Board alone has the discretion to determine how to use unspent funds in the library reserve.
2. A library board no longer has sole discretion in determining the number of mills that must be levied for support of the library because Mont. Code Ann. § 7-6-4035 clearly provides that the proposed budget and mill levy for each board is subject to approval by the local governing body. Therefore the Library Board cannot require the City or County to levy a certain number of mills in support of the library.
3. Because the City and County have discretion to determine the number of mills necessary, they do not have to levy a particular number of mills in perpetuity.

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Sincerely,

A handwritten signature in black ink, appearing to read 'S. Bullock', with a long horizontal line extending to the right.

STEVE BULLOCK  
Attorney General

sb/zz/jym