

Interlocal Agreements versus Service Agreements

Initial questions from MSL Staff: Some of our libraries have requested assistance with the development of new interlocal agreements between the library and city or county. They are looking for some kind of protection for their funding. We are trying to determine the best course of action for the libraries, but as we looked at the law we found that we have some questions for you about this issue.

1. Can libraries create an interlocal agreement with their city or county to protect their funding? In looking at the interlocal agreement law it appears to us that this is a document used to create a library. It is between local government entities rather than a library board and a city or county. This type of agreement is appropriate for our school/public libraries, multi-jurisdictional service district libraries, and even our city-county libraries, but it doesn't appear to work for other types of libraries such as a city or county library. Is that correct?
2. Closely related to this issue, can libraries enter into a service agreement with their city or county and would this protect their funding? See the attached document for one existing example of this type of agreement. We cannot find much guidance in the law. We know that 22-1-309 gives library boards the authority to enter into contracts regarding library services, but can they enter into this particular type of agreement with their funding bodies? And if they do enter into this type of agreement does it protect their funding until the agreement is dissolved? Finally, can an agreement like this be entered into if it's a city library with city only funding? It seems like it would be unusual and unlikely that a city or county library would enter into a service agreement if they were created by that particular government body, but some of the library directors have wondered about such an agreement and whether or not it is even possible.

Response from Jim Scheier, November 16, 2012: Question 1

Your first question is whether libraries can “create an interlocal agreement” with their city or county to protect funding. As you note in your question, the statutes authorizing interlocal agreements permit local government entities, not libraries, to enter into such agreements. See the Interlocal Cooperation Act, Mont. Code Ann. tit. 7, ch. 11, pt. 1 (the Act). Mont. Code Ann. § 7-11-102 states that the purpose of the Act is to “permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units . . . to provide services and facilities” (Emphasis added).

The law authorizes one or more “public agencies” to enter into an interlocal agreement to accomplish this objective. Mont. Code Ann. § 7-11-104. A “public agency” is defined as “any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.” Mont. Code Ann. § 7-11-103. Although

the Act does not include a definition of “political subdivision,” the term is defined elsewhere in the Montana Code Annotated. The definitions vary depending on the context within which the term is used, but they typically refer to a city, county, school district, or other unit of local government. See, e.g., Mont. Code Ann. §§ 2-9-101(5), 2-16-602(1), 7-1-4121(15), and 7-7-109(1)(c)(i). This is consistent with Mont. Code Ann. § 7-11-102, referenced above, which refers to local governmental units. In my opinion a library is not included within the definition of the term “public agency” because it is not a “political subdivision.” Thus, a library is not authorized to enter into an interlocal agreement.

While libraries are not authorized to enter into interlocal agreements, public agencies (local governmental units) may enter into an interlocal agreement for the purpose of providing library services. Moreover, there is nothing in the Interlocal Cooperation Act that would prevent the parties to an interlocal agreement from agreeing to a particular level of funding for the library. This specific issue was addressed in 49 Op. Att’y Gen. No. 16 (2002), where the Attorney General discussed an interlocal agreement between Broadwater County and the Townsend School District under which they agreed to share fiscal responsibility for the county library. As noted in the opinion, the School District agreed to house the library and provide funds for its operation. The County agreed to “provide the approved level of funding for the general operation of the library,” and to “[l]evy the maximum number of mills allowed by law for support of the public library.” The opinion noted: “Nothing in the 2001 [legislative] tax and budget amendments would prevent Broadwater County from voluntarily entering an interlocal agreement providing that it would accept the library board’s budget proposal and levy the necessary mills to fund it.” Thus, if a library is created pursuant to an interlocal agreement, the local governmental units that are parties to the agreement may agree, as part of the contract, to fund the library based on the library board’s budget proposal.

As your email notes, an interlocal agreement may be appropriate for multijurisdictional service district libraries created under title 7, or city-county libraries created pursuant to Mont. Code Ann. § 22-1-316. However, an interlocal agreement would not come into play in the case of a typical public library created under Mont. Code Ann. § 22-1-303, such as a city library or a county library. This is because those cases do not involve two local governmental units that have entered into a contract to provide library services. Rather, a public library is typically “created” by a city or county pursuant to one of the methods outlined in Mont. Code Ann. § 22-1-303. And, those libraries are funded pursuant to Mont. Code Ann. § 22-1-304 – typically through a tax levy.

Question 2

Your second question is whether a library can enter into a “service agreement” with their city or county, and whether this would protect the library’s funding. Mont. Code Ann. § 22-1-309(3) gives a library board of trustees the power to “contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts.” Thus, *in theory* a public library created under Mont. Code Ann. § 22-1-303 could enter into a contract (not an interlocal agreement) with the city or county through which it was created. However, I agree with the observation in your email that it would be unusual for a city or county to enter into a separate contract with the library to address funding issues. The funding mechanism for libraries created under title 22 is specified in the statutes. Moreover, it is likely that most cities and counties are well aware of the Attorney General’s recent opinion in 54 Op. Att’y Gen. No. 7 (June 1, 2012), recognizing that the proposed budget submitted by a library board is subject to approval by the local governing body.

The contract that you attached to your email, between Gallatin County and the board of trustees of the City of Belgrade Public Library, was entered for the purpose of allowing the Belgrade Public Library to assume the functions of a county library within Gallatin County. The contract was entered into pursuant to Mont. Code Ann. § 22-1-315, which expressly authorizes this type of contract:

City library may assume functions of county library. (1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

Subsection (2) of the statute specifically authorizes the parties to come to an agreement on the amount that the county will pay to fund the library services.

To summarize, there is nothing that I am aware of that would prohibit a public library created under Mont. Code Ann. § 22-1-303 from entering into a contract with the city or county through which the library was created. Such a contract could conceivably require the city or county to accept the library board's budget and to fund the library accordingly, if the city or county would agree to do so. However, as noted above I think it is unlikely that a city or county would enter into a separate contract with a library that was created pursuant to the statutory procedure outlined in title 22 – particularly in view of the fact that the recent Attorney General's opinion recognizes the authority of a local governing body to approve the budget prepared by the library board.