From: McHugh, Sarah
To: Bruhn, Anastasia; Hamer, Colleen
Subject: FW: State Library question about library holidays
Date: Thursday, January 30, 2014 12:24:29 PM

Can we add this documentation to the legal materials available internally to MSL LD staff within the Directory?

Sarah

From: Scheier, James
Sent: Thursday, January 30, 2014 9:20 AM
To: Stapp, Jennie; McHugh, Sarah
Subject: RE: State Library question about library holidays

I agree with that, Jennie.

From: Stapp, Jennie
Sent: Thursday, January 30, 2014 9:18 AM
To: Scheier, James; McHugh, Sarah
Subject: RE: State Library question about library holidays

That makes sense to me, Jim. One point that I would add is that it is probably not permissible for a library to record leave as Holiday leave on days that are not recognized as legal holidays but rather days a library chooses to be open. Would you agree? I think this point is more of an audit concern than a legal concern.

Jennie

State Librarian
Jstapp2@mt.gov
406.444.3116

From: Scheier, James
Sent: Thursday, January 30, 2014 9:13 AM
To: McHugh, Sarah
Cc: Stapp, Jennie
Subject: RE: State Library question about library holidays

Sarah,

I assume those libraries are also closed on Thanksgiving and Christmas days. I can't think of any reason why a library would not be permitted to also close on the day after Thanksgiving and Christmas Eve, both of which are not recognized holidays in Montana. Libraries can establish their own hours of operation and can decide which days to be open. What they cannot do, in my opinion, is decide to be open on an officially recognized holiday (one of those listed in MCA 1-1-216), or "change" an existing holiday – for example a library could not decide to have its Thanksgiving holiday closure on the Monday following Thanksgiving, while remaining open on Thanksgiving Day. However, there is nothing that

would prohibit a library from closing the day after Thanksgiving or Christmas Eve, because that would fall within the library's authority to establish its hours of operation. I hope that clarifies.

Jim

From: McHugh, Sarah
Sent: Wednesday, January 29, 2014 5:17 PM
To: Scheier, James
Cc: Stapp, Jennie
Subject: RE: State Library question about library holidays

Jim,
For additional clarification, we do know of libraries closing on various non-official holidays, e.g., the Friday after Thanksgiving. This would seem to imply that neither they nor the local government officials could do that.

So, if, for example, the city of Livingston closed its offices on Christmas Eve it would seem from your email below that is also impermissible.

Sarah

From: Scheier, James
Sent: Tuesday, January 28, 2014 4:02 PM
To: McHugh, Sarah
Cc: Stapp, Jennie
Subject: RE: State Library question about library holidays

Sarah,

Based on my review of your questions, I don't think a public library board can create additional holidays or change existing holidays for the library or its staff.

In your email you cited some of the relevant statutes. Mont. Code Ann. § 1-1-216 lists the legal holidays "in the state of Montana." I agree with your conclusion that this means these are the legal holidays recognized throughout the state of Montana, not just those that must be recognized by state government agencies.

Mont. Code Ann. § 2-18-603 describes a means of calculation of leave time for an "employee" who is scheduled for a day off on a day that is observed as a legal holiday. "Holiday" is defined in Mont. Code Ann. § 2-18-601(8) by reference to legal holidays listed in Mont. Code Ann. § 1-1-216. "Employee" is defined as any person employed by a "agency," which includes "any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state." Mont. Code Ann. §§ 2-18-601(1) and (6). This may be broad enough to include employees of local public libraries.

Mont. Code Ann. § 7-4-102 states that, unless otherwise provided by law, local government officers shall keep their offices open for business during office hours

established by the local governing body, if consented to by the affected officer, except Saturdays and legal holidays. Mont. Code Ann. § 7-4-2211 contains a similar provision for specifically listed county offices, again with an exception for Saturdays and legal holidays. You are correct that libraries are not included in the list of offices in the statute. As you know MSL standards provide that a library board and director shall determin the days of the week and the hours during the day that a public library shall be open, establishing minimum and desirable hours based on the population of the community served by the library. ARM 10.102.1150G. I think it is noteworthy that the rule does not contain any language that specifically authorizes a library board and director to include hours of operation that occur on a holiday, to create their own holidays, or to change an existing holiday.

We're all familiar with the various Attorney General Opinions (AG Opinions) that have recognized that library boards of trustees have a degree of autonomy from local governing bodies when it comes to administering a public library (for example, hiring and firing, fixing salaries of library staff, prescribing duties of library employees, conducting personnel administration, etc.). However, my research has not disclosed any statute, case law, AG Opinion, or administrative rule that would support a conclusion that libraries may set their own holidays, change existing holidays, or have hours of operation on a recognized holiday. I therefore don't believe such a conclusion would be legally supportable.

Let me know if you want to discuss this, or if you have additional questions.

Jim

From: McHugh, Sarah
Sent: Friday, January 10, 2014 10:30 AM
To: Scheier, James
Cc: Stapp, Jennie
Subject: State Library question about library holidays

Jim,
We have had a question regarding whether or not a public library board can create additional or change existing holidays for their library. That question has generated a larger question about the establishment of holidays at local and state levels.

To the first question: we are aware of MCA 1-1-216 that codifies holidays "for the state of Montana." Other references to this statute imply that they are legal holidays for more than just state government. There are other implications that library boards may have more flexibility but they are just implications, nothing is stated directly. For example, 39-71-123 defines Wages to include holidays. 22-1-310 says that the library board shall set the compensation of the chief librarian. Does this imply that setting compensation includes the ability to set holidays?

MCA 7-4-2211 states that certain county offices must be open during office hours except on legal holidays. However, libraries are not included in the list of offices. Additionally, 20-25-306 gives the Board of Regents the authority to designate holidays by exchanging certain holidays, not adding holidays. However, we do not see similar authority for local governments and nothing similar exists for library boards.

To the larger question: Do local city/county jurisdictions have the right to locally add or change holidays established in Code? If so, is the library board bound to follow their local jurisdiction's holiday schedule?

We are really asking two questions here, one related to a public library board's authority over holidays and the other asking what takes precedence in this area - local or state legal holidays?

Thank you,

Sarah

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