

## Hamer, Colleen

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**Subject:** FW: MSL next question

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**From:** Scheier, James  
**Sent:** Tuesday, August 04, 2015 11:37 AM  
**To:** McHugh, Sarah  
**Cc:** Stapp, Jennie  
**Subject:** RE: MSL next question

Sarah,

The two questions you pose in paragraph 2 of your email can be addressed, I think, by reviewing Mont. Code Ann. § 22-1-314, which provides:

**Continued existence of all public libraries.** All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

In *Board of Trustees, Butte Silver-Bow Public Library v. Butte-Silver Bow County*, 2009 MT 389, the Montana Supreme Court cited this statute, noting that when the Legislature enacted the current laws governing the creation and administration of public libraries in 1967, it included § 22-1-314 to ensure that the Act would apply to libraries already in existence prior to 1967. However, it is important to determine whether a particular library was legally “established” prior to 1967.

Public libraries in Montana have a historical basis going back to territorial days. In 1883 the Montana Legislative Assembly passed a law authorizing the establishment of free public libraries by “the municipal authorities of any town or city.” To do so, the city or town council had to first submit the question of whether to establish a library to a vote of the qualified electors. If approved, the council would then pass an ordinance establishing the library and a tax levy for its maintenance and support. This law, with minor changes, was reenacted in 1895 as sections 5039, 5040, and 5041 of the 1895 Code. The laws, again with minor revisions, were reenacted in 1907 and 1915.

Montana law authorized the creation of county libraries as early as 1915, by a petition signed by at least 10% of the resident taxpayers of the county. Following a public hearing the county commissioners could then adopt a resolution establishing the library.

The Judith Basin County Free Library appears to be legally created by resolution, following a petition, in 1945. The Miles City and Lewistown public libraries appear to have been legally created by ordinance in 1901.

The record of City Council proceedings provide by the Glendive Public Library are somewhat incomplete. The third page of that document notes that the Glendive Women’s Club provided the books and furnishings of the Glendive Public Library to the City of Glendive, and on October 20, 1924 the City Council voted to accept the books and furnishings. However, the next portion of the document notes that the Mayor appointed members of the library board “as provided in Ordinance No. 388, passed and approved on September 11, 1924.” However, the record of proceedings where Ordinance No. 388 was considered and passed is not included as documentation for establishment of the library. Ordinance No. 388 is the ordinance that established the library according to the law in effect at that time. I actually have a copy of Ordinance 388 that I found in my State Library files that were passed on to me when I first began providing legal advice in 1987. Attached is a copy of the ordinance, which can probably be included with the other documentation provided by the Glendive Library. Like the other libraries for which you provided documentation, the Glendive Public Library appears to have been legally established in 1924.

There is no reason to be concerned if the original entity that created the library no longer exists (such as a local volunteer organization), so long as the library was subsequently legally established by the city or county. An example may be the Glendive Library, which appears to have been initially established by the Glendive Women's Club. Even if that organization no longer exists, it is apparent from the documentation that the library was legally established pursuant to Ordinance No. 388.

As far as a checklist of things to look for in older documentation related to establishment of a public library, there should typically be either an ordinance or a resolution (depending on whether the library was established by, respectively, a city or a county) documenting establishment of the library. If a library was subsequently changed in some manner, after it was initially established, the documentation of the change should also be provided. For example, if a library initially established as a city library later becomes part of a joint city-county library, there should be a copy of the contract between the city and county.

A red flag would be documentation that appears to be incomplete, such as that provided by the Glendive Public Library – which should now be complete with the addition of a copy of Ordinance No. 388. The library should always provide a copy of the specific ordinance or resolution that established the library way back whenever.

Sarah, let me know whether this is what you were looking for, or if you have additional questions.

Jim

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**From:** McHugh, Sarah  
**Sent:** Wednesday, July 22, 2015 5:19 PM  
**To:** Scheier, James  
**Cc:** Stapp, Jennie  
**Subject:** MSL next question

Jim,  
Our second question concerns the individual public library documents that legally established each library. MSL began requiring that libraries have a copy of their establishment document on file at MSL in the late 1990's in order to, in addition to other concerns, verify that the libraries receiving state aid legally existed.

Some of these legal documents are quite old and have not been reviewed or updated by the libraries and their local governing bodies since the library's inception. Many of the establishment resolutions and agreements pre-date current Montana library law. We are wondering whether or not the older agreements are grandfathered in under older Montana Code. Also, should we be concerned where the original entity that created the library and referred to in the document no longer exists? (An example would be a local volunteer organization or club that came together to "create" a library.)

We are thinking about putting together a checklist of things to look for and possible red flags in the older documents to assist library directors and boards as they review their own document that established the library. We would appreciate very much your suggestions for this type of checklist, especially because we do not want to cause more harm than good in opening up these kinds of discussions locally.

Attached are just a few examples of some old legal establishment documents that are still in use:  
Miles City – 1901, with a name change in 1973  
Glendive – 1924  
Lewistown – 1901  
Stanford (Judith Basin) – 1945

Many have the 1997 certification document that MSL required as a cover page.

Thank you,  
Sarah

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