

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU
444-2026

BROADWATER
County
Townsend
School/public

MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: RICHARD MILLER
Montana State Librarian

FROM: JIM SCHEIER JS
Assistant Attorney General

RE: Broadwater County Library

DATE: May 10, 1993

Issues

You have asked my legal opinion concerning several questions related to Broadwater County's plan to enter into an interlocal agreement to provide library services. The agreement would be entered between Broadwater County and the Townsend School District, and would result in the operation of a combined community and school library. You presented two related questions:

1. Do the statutes in Montana Code Annotated (MCA) tit. 7, pertaining to interlocal agreements, provide for the governance of a library created pursuant to such an agreement, or do the statutes in MCA tit. 22 pertaining to public libraries, control?

Answer: The statutes in MCA tit. 22 pertaining to public libraries, provide for governance of the library.

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2. Is it necessary that a library created in this manner be governed by a library board of trustees, or can the board of trustees of the school district act as the library governing board?

Answer: A library board of trustees must be created, pursuant to the provisions of MCA tit. 22, ch. 1, pt. 3.

I have reviewed the draft of the agreement that the school district sent to Bob Cooper, as well as the sample interlocal agreement that you provided to John McNulty.

Discussion

MCA § 22-1-301(3) provides as follows:

"Public library" means a library created under §§ 22-1-303 to 22-1-317 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles.

MCA § 22-1-312 states:

Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are empowered to cooperate, merge, or combine in providing library service. [Emphasis added.]

The Interlocal Cooperation Act, in MCA tit. 7, ch. 11, pt. 1, establishes a vehicle by which local political subdivisions may cooperate and combine to provide library service. MCA § 7-11-104 provides, in pertinent part:

Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform. ... [Emphasis added.]

MCA § 7-11-103 defines "public agency" as "any political subdivision, including municipalities, counties, school districts, and any agency or department of the State of Montana." [Emphasis added.]

Construing these statutes together, it is clear that a county and a school district may cooperate to provide combined library services, and that they may do so pursuant to an interlocal agreement, as proposed by Broadwater County and the Townsend School District.

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However, even though the creation of such a library will be formalized through an interlocal agreement, the library will nevertheless be "created" pursuant to the provisions of MCA § 22-1-312, which empowers local political subdivisions to cooperate, merge, or combine in providing library service. It will therefore fit within the definition of the term "public library" in title 22, since it will have been "created under 22-1-303 through 317".

Since it will qualify as a "public library" under those statutes, its governance is controlled by the provisions of MCA tit. 22, ch. 1, pt. 3. MCA § 22-1-308 requires the appointment of a library board of trustees, which will govern the library. Subsection (1) of that statute provides:

Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library.

The statute does not provide a specific procedure for the appointment of a board of trustees in a case, such as this one, where a county and a school district combine services to establish the library. In other words, the library created in this case will not be a "city library" or a "county library". Thus, since the subject matter is not covered by the statutes in title 22, it is appropriate to look to the statutes governing the procedure for formalizing the creation of the library, in the Interlocal Cooperation Act, for guidance.

MCA § 7-11-105(6) provides that the interlocal agreement shall specify the "provision for an administrator or a joint local board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on said joint board". [Emphasis added.] The contracting parties may therefore specify in the contract the precise method by which the board of trustees will be appointed, i.e., which political subdivision appoints which board members. The method set forth in the sample interlocal agreement you provided would be an acceptable option. In all other respects, the provisions of MCA tit. 22, ch. 1, pt. 3 apply, and the library must be governed according to the responsibilities and powers of the trustees specified in those statutes.

For these reasons, it would not be appropriate for the school board to serve as the library's governing board. Although it would be acceptable for the interlocal agreement to provide that either the school board or the county commissioners may appoint all of the library board trustees, MCA § 22-1-308(2) states that

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"[n]ot more than one member of the governing body shall be, at any one time, a member of such board." Therefore, the school board could not serve as the library board of trustees.

Give me a call if you have any questions, or would like to discuss these issues further.

jms/bjh

c: Bob Cooper

MONTANA STATE LIBRARY



MARC RACICOT, GOVERNOR

1515 E. 6TH AVENUE

STATE OF MONTANA

(406) 444-3115

PO BOX 201800
HELENA, MONTANA 59620-1800

April 24, 1993

John McNulty, Co-Director
Broadwater County Library Project
Box 430
Townsend, Montana 59644

Dear Mr. McNulty:

Accompanying this letter is a sample interlocal agreement for your consideration. It is derived from a number of sources including a generic interlocal agreement reviewed by our attorney, citations to pertinent state statutes, and language recommended by me and my staff which attempts to take into account the unique nature of your joint library project. All parties involved will want to review carefully this language to make certain that it fits your needs.

As we began and continued work on this recommended language, we came to realize that some consulting with you may be useful in order to discuss fully the implications of organizing the library one way versus another. However, we did not want to hold up the process too much longer, so that you will have the benefit of a full construction season. Our recommendation to you is to review the enclosed document and to draw up your agreement with the understanding that there are certain elements which may need to be modified as you proceed with your project. Provision is made for such modifications within this draft agreement. If all of you are comfortable with this suggestion, you should be able to move ahead in a timely fashion.

If you have any questions about the attached document, I would be happy to try to answer them. Please feel free to call or write me.

Sincerely,

A handwritten signature in cursive script that reads "Richard T. Miller, Jr." with a stylized flourish at the end.

Richard T. Miller, Jr.
State Librarian.

cc Sheila Cates
Robert Cooper

Sample Interlocal Agreement

INTERLOCAL AGREEMENT BETWEEN SCHOOL DISTRICT # _____ AND THE COUNTY OF _____ TO COOPERATE IN THE PROVISION OF LIBRARY SERVICES TO THE RESIDENTS OF _____

WHEREAS, the County of _____ and the School District of _____ are both authorized by law to provide libraries; and

WHEREAS, Sections 7-11-101 - 108 MCA authorize local governments to enter into interlocal agreements to jointly provide services that each are authorized to provide; and

WHEREAS, the purpose of this Agreement is to provide a basis for cooperation between the School District and County which will result in equitable library service to all residents of the County; and

WHEREAS, the County and School District are desirous of entering into a contract whereby library services can be provided from a central facility located within _____ and operated through the joint efforts and authority of both parties;

NOW THEREFORE, in consideration of the execution of this Agreement and the mutual covenants hereinafter expressed, the parties join in establishing and maintaining a joint school-public library mutually agreed to as follows:

I. School-Public Library of _____

As hereinafter provided, the County Commissioners of _____ County and the School Board of Trustees of _____ agree to support the functions of the joint school-public library within the County of _____, and agree to provide the services of the school-public library to all residents of the County of _____. The joint school-public library shall be known as the _____ Library of _____.

II. The Board of Trustees

- (1) The Board of Trustees shall be composed of five (5) members appointed as follows:
a. Two members shall be appointed by the School Board of Trustees.
b. Two members shall be appointed by the County Commissioners.
c. After the appointment of these four members, the four will select the fifth member of the Board.

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- (2) Terms:
- a. Trustees shall hold their offices for five years from the date of appointment and shall serve until their successors have qualified. All terms shall expire on _____. Before _____ of each year a trustee shall be appointed to replace the retiring trustee.
 - b. Initial appointments pursuant to this Agreement shall be staggered such that one School District appointee shall be appointed for three years and one for two years; one County appointee shall be appointed for one year, one shall be appointed for four years. The at large fifth appointee shall be appointed for five years. Following the expired terms of the initial appointments, all terms shall thereafter be for five years.
 - c. All vacancies, whether by resignation, expiration of term, or otherwise, shall be filled by appointment by the School District or Commissioners, depending on which agency appointed the trustee whose position becomes vacant. A vacancy occurring in the fifth or at large position shall be filled by appointment by the other four members of the Board of Trustees.
 - d. Trustees shall serve no more than two full five-year terms in succession.

III. Powers, Duties and Responsibilities of the Library Board of Trustees

- (1) The Library Board of Trustees shall be the policy-making body of the library, have exclusive control over expenditure of library funds, of construction or lease of library buildings, and of the operations and care of the library. Such policies shall incorporate standard protections such as the "Library Bill of Rights" and the "Freedom to Read Statement" among others to insure maximum opportunity to provide excellent library services to Broadwater County's citizens.
- (2) The Library Board of Trustees shall appoint and set the compensation of a qualified librarian as chief librarian who shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties.
- (3) The Library Board of Trustees shall adopt bylaws and rules consistent with State law for its own transaction of business and for the governance of the Library,

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including the days, time and number of regular meetings of the Board. The Board shall select a chairperson and vice-chairperson to serve one-year terms which may be consecutive and unlimited in number.

- (4) The Library Board of Trustees shall prepare an annual budget for submission to the School District and County Commissioners.
- (5) The Library Board of Trustees shall have the power to contract, receive or deliver library services, to acquire and hold land and personal property and to accept gifts, grants, donations or bequests consistent with state law. These gifts, grants, donations, devices and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.
- (6) The Library Board of Trustees shall have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city-county or the school district or both, for the use and purposes of the library and to sell, exchange or otherwise dispose of property, real or personal, when no longer required by the library.
- (7) The Library Board of Trustees shall make and render to the School District and Commissioners complete financial and statistical reporting of the operation of the Library on a regular basis, and shall provide end-of-year reports to each party as well as an annual report to the State Library as required by statute.
- (8) The Library Board of Trustees shall insure that the general public and school district's students have access to the full range of services the library offers.
- (9) The Library Board of Trustees shall insure that access to library services is improved such that:
 - a. The number of open hours, at a minimum, exceed those currently offered.
 - b. Evening, weekend and after school hours will be expanded.
 - c. To the greatest extend possible, all services and materials will be equally available to all library users.

IV Budget and Finance:

- (1) The School District shall:
 - a. Provide all utilities, janitorial and maintenance care year round.
 - b. Provide funds for the general operation of the library as well as a materials budget for meeting the needs of the school population. Such funding shall be no less than that provided currently for

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the operation and support of the two school libraries.

- c. Be responsible for maintaining the accounting records.

(2) The County Commissioners shall:

- a. Provide funds for the general operation of the library as well as for a materials budget to meet the non-school needs of the population. Such funding shall be no less than that provided currently for the operation and support of the public library.
- b. Levy the number of mills necessary for support of the library, up to the maximum allowed by law, based upon the Library Board's budget request.
- c. Transfer the designated public library funds to the School District using proper warrants as these funds become available.
- d. Establish a library depreciation reserve fund for acquisition and replacement of property, equipment and improvements necessary to maintain and improve library services. This fund may be expended, invested and held in accordance with MCA 22-1-305 to 22-1-307.

- (3) Both parties agree that they will help to provide the most beneficial arrangements for this joint library for items such as insurance coverage, workers' compensation, etc. by working with the Library Board of Trustees.

V. Effective Date, Duration, and Termination

1. The adoption of this agreement by both bodies, the School District and the County Commissioners, is contingent upon its review and approval by the attorney for the County of _____.
2. Within 10 days of adoption by both bodies, the School District and the County Commissioners, and prior to implementing it, the agreement shall be filed with the county clerk and recorder and secretary of state.
3. The agreement shall be in full force and effect within 30 days of the approval by both bodies and shall remain in effect until termination by either party pursuant to the termination provisions set forth below.
4. Either party may terminate this agreement with sixty (60) days written notice from one party to the other. The termination shall become effective

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at the beginning of the next fiscal year. Such termination does not absolve the School District and the County Commissioners from satisfying any federal equity requirements assigned to this joint library project. Both parties agree to the following as the basis for termination should such become necessary:

- a. That, in regard to the library building itself, the value of each board's contribution is equal to that of the percentage each contributed to the total construction cost, including all sources of funding.
 - b. That, for the initial furnishing and stocking of the library (from existing properties), the contribution of each board is equivalent to the percentage as in 4.a. above.
 - c. That, there shall be an ongoing accounting of the percentages contributed by both parties as the library becomes operational. The financial reporting as outlined elsewhere in this agreement, shall serve as the basis for this determination.
 - d. That any depreciation of value of property, either from the initial phases of this joint library, or once the library is operational, shall be at an agreed-upon rate and shall be applied equally to all property of the joint library.
 - e. Upon termination by mutual consent, a determination of all right, title and interest in real and personal property, including permanent improvements, shall be made by mutually agreeable means (using information from the above as a basis), and a settlement shall be reached which is agreeable to both parties. Such settlement shall take into account issues such as federal equity in the building.
5. This agreement may be amended at any time by mutual written consent of the parties involved.
 6. This agreement shall be reviewed on an annual basis by the Library Board of Trustees at a mutually agreed upon time.
 7. It is agreed by both parties that the real property housing the school-public library shall be held in the name of the School District. It is further agreed that any furniture, materials, and equipment purchased with either school district or county funds will be held jointly by both parties unless this agreement is terminated.