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TO: BOB COOPER Date 1-24-06

FROM: JM Hicks RE: LIR Board

COMMENTS: Thank you for your time.

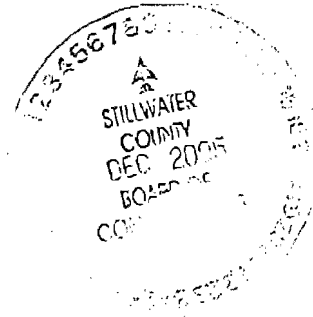
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December 8, 2005

Stillwater County Library Board
James M. Hicks
245 A Street
Columbus, MT
59019



Stillwater County Commissioners
Maureen Davey: Chair
400 East 4th Street
Columbus, MT
59019

Dear Maureen,

During the budget formulation process in April and May, the library board, in conjunction with the head librarian, very conscientiously and painstakingly cut \$3500.00 from our last year's budget coming in well under the statutory limit of 5 mills. We did this with the knowledge that this year was going to be a rather tight budget year. In October of this year the library director was informed that the library budget would be cut by another \$3000.00. This makes the libraries total decrease in budget stand at \$6500.00. We believe this is contrary to state law.

According to Section 22-1-304 (6) MCA: Trustees shall *Prepare an annual budget, indicating what support and maintenance of the library will be required from public funds.* The Attorney General Opinion 48 A.G. Op. 91 (1986) and also 48 A.G. Op 3 (1999) states that *the County Commissioners cannot usurp the statutory authority for setting the libraries budget so long as the library board holds the budget at or below the 5 mills authorized by Section 22-1-304MCA (see 2001 amendment to 22-1-304).*

Our position is that our head librarian goes out of her way to hold down costs of a public library, often going without needed material. Our budget was pared to the bare bones in July and we are requesting that the \$3000.00 cut from our budget be placed back into the budget.

We would welcome an opportunity to discuss this with you in the next few weeks.

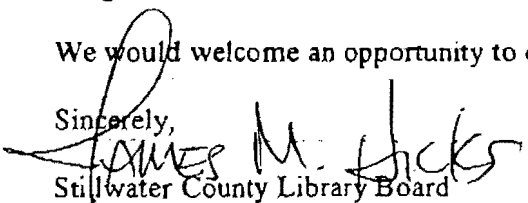
Sincerely,

Stillwater County Library Board
James M. Hicks: Chair

Exhibit B

FELT, MARTIN, FRAZIER, JACOBS & RAPKOCH, P.C.

ATTORNEYS AT LAW

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January 10, 2005

Stillwater County Commissioners
Charles E. Egan: Chairperson
400 East 4th Street
Columbus, Montana 59019**RE: COUNTY LIBRARY BOARD OF TRUSTEES - POWERS AND DUTIES**

Dear Mr. Egan and fellow Commissioners:

You have requested a legal opinion regarding the issues presented in the attached letter submitted on December 8, 2005, by Mr. James M. Hicks, Stillwater County Library Board of Trustees Chairman. The issues presented in his letter require a close analysis of Mont. Code Ann. title 22, chapter 1, part 3 and all statutory provisions contained therein.

This opinion will address each of the issues presented. This opinion is limited to the information I have on file. Any additional information may change the analysis provided in this opinion.

Central to the analysis below is the question of whether the county commissioner's discretionary budget authority as prescribed under Mont. Code Ann. § 7-4-2110, 7-6-2501, and 15-10-420 is superseded by the limited budget authority of the county library Board of Trustees created under Mont. Code Ann. § 22-1-308 and defined under § 22-1-309. These five provisions of law are central to this analysis and will therefore be the primary focus.

I note that the gravamen of Mr. Hick's request is found within the excerpts of two Attorney General's opinions issued in 1986 and 1999, respectively. Upon a closer inspection of the statute, and, in particular, the Compiler's Notes regarding the 2001 amendment, it is clear the opinions cited by Mr. Hicks are no longer applicable, as the provisions of law the opinions are based upon were deleted in their entirety in 2001. I will explain the change below.

ISSUES PRESENTED

The issues presented in Mr. Hick's letter of December 8, 2005, are as follows:

1) Whether a library board of trustees created under the authority of Mont. Code Ann. § 22-1-303 has the statutory authority to demand increases in their annual budget from the county commissioners?

2) Whether county commissioners, through their powers prescribed under Mont. Code Ann. §§ 7-4-2110 and 7-6-2501, have the authority over the resources available to provide to the budget of a library board created under the authority of Mont. Code Ann. § 22-1-303?

FACTS

In tax year 2003, Stillwater County Commissioners engaged in a dispute between the Montana Department of Revenue and Sweet Grass County over issues pertaining to the State's taxation of metal ore mined by the Stillwater Mining Company. Although there has been no final legal determination made with respect to who is entitled to the tax revenue of the disputed ore, there has been an adverse county-wide fiscal impact.

In tax year 2004, Stillwater County taxing jurisdictions (who are all part of the Stillwater (Nye) Mine Hard Rock Mining Impact Plan - the subject of the present dispute), incurred a shortfall in tax revenue in excess of \$300,000.00. In tax year 2005, Stillwater County incurred an additional loss of \$524,048.00 out of the funds of all taxing jurisdictions. In tax year 2005, a total of \$127,664.20 has been eliminated from Stillwater County's general fund of money available in 2006. A total of \$3,494.29 has been eliminated from the funds available to the county library for fiscal year 2006. A breakdown of the budgetary shortfalls affecting all taxing jurisdictions, including the county library fund, is presented in Exhibit "A" attached.

The Stillwater County Commissioners were presented with the budget requests for fiscal year 2006 from all local government units in June of 2005. The library board presented a request for \$138,403.00 for use in fiscal year 2006. The county commissioners levied 3.07 mills against the total taxable value available to provide \$136,932.00 for the library's budget. This created a difference of \$1,471.00 between what was requested and what was actually provided.

After reviewing the amount of tax revenue available to the county for 2006, it was evident, that because tax revenue is significantly less than in previous years, the commissioners were required to address the limited funding available to each of the local government units in the county. Consequently, most, if not all fiscal requests were not met for fiscal year 2006.

On December 8, 2005, Mr. James M. Hicks, chairman of the Stillwater County Library Board of Trustees, requested \$3,000.00 be placed back in the budget, because the board believes leaving \$3,000.00 out of the said budget would be "contrary to state law." See attached Exhibit "B".

ANALYSIS

Powers and Duties of Public Library Trustees

I. **WHETHER A BOARD OF TRUSTEES CREATED UNDER THE AUTHORITY OF MONT. CODE ANN. § 22-1-303 HAS THE STATUTORY AUTHORITY TO DEMAND INCREASES IN THEIR ANNUAL BUDGET FROM THE COUNTY COMMISSIONERS UNDER THE AUTHORITY OF MONT. CODE ANN. §§ 22-1-308 AND 22-1-309?**

The Stillwater County library is a free public library established under Mont. Code Ann. title 22, chapter 1, part 3 and pursuant to County Resolution No. 98-9, which reaffirms the creation of the Stillwater County Public Library. The library is governed by a board of five appointed trustees. Mont. Code Ann. §§ 22-1-308; 41 Op. Att'y Gen. No. 91 (1986). The library trustees have a broad range of powers and duties. Mont. Code Ann. §§§§ 22-1-309, -310; 41 Op. Att'y Gen. No. 91 (1986); see also Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 24, 555 P.2d 507, 509 (1976). The trustees are given exclusive control of the expenditures of the public library fund, the construction or lease of library buildings, and the operation and care of the library. See Mont. Code Ann. §§ 22-1-309. The trustees also have the duty to appoint and set the compensation for the chief librarian and, with the recommendation of the chief librarian, "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." See Mont. Code Ann. §§ 22-1-310. Furthermore, §§ 22-1-309(9) provides that the library trustees shall "exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library."

In addition, library trustees have exclusive control of a library's budget. 41 Op. Att'y Gen. No. 91 at 394-95; see also Mont. Code Ann. §§ 7-6-2348(1) (the proposed budget and the number of mills to be assessed by any appointed board, commission, or other government entity are subject to approval by the local governing body). Specifically, Mont. Code Ann. §§ 22-1-309(6) mandates that library trustees "prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds." The trustees must submit the budget to the county commissioners, §§ 22-1-309(6), and the county commissioners must make a determination of how the said budget comports with their authority over the general fund levies under Mont. Code Ann. § 7-6-2501.

Statutory History of § 22-1-304(1)

Prior to 2001, the county commissioners were given the statutory authority to "impose a property tax levy not to exceed five mills for the purpose of raising the funds required to maintain the library." 41 Op. Att'y Gen. No. 91 at 394, citing Mont. Code Ann. §§ 22-1-304(1).

This provision created some concern with respect to the powers and duties of the county commissioners and the powers and duties of library trustees. Perhaps most problematic was the question of how Mont. Code Ann. § 22-1-304(1) (1999) should apply, and how it should be interpreted.

In Attorney General's Opinion 48 Op. Att'y Gen. No. 3 (1999), Big Horn County presented the following issue pertinent to this analysis:

Where a county library is funded by a general fund levy under Mon. Code Ann. § 7-6-2501 and not under Mont. Code Ann. 22-1-304(1), do the county commissioners have the authority to:

Modify the annual budget submitted by the county library trustees?

Previous Attorney General's opinions have acknowledged the broad statutory powers and duties vested in a board of library trustees and the autonomy given to the trustees in governing the library. 42 Op. Att'y Gen. No. 98 (1988); 41 Op. Att'y Gen. No. 91 (1986). In 41 Op. Att'y Gen. No. 91, Attorney General Greely considered whether a board of county commissioners could: ... (2) modify the annual budget submitted by the library trustees even though it did not exceed the five-mill limit; ...

In his 1986 opinion, Attorney General Greely rejected the proposition that a board of county commissioners could modify the library budget, explaining:

The trustees' power under section 22-1-309(6), MCA, to adopt an annual budget forecloses the board of county commissioners from effecting changes in such budget. The obvious purpose of the trustees' authority in library budget matters is to allow application of their informed judgment to fiscal issues. Such authority is, moreover, an integral aspect of the trustees' independence without which many of their other express powers would be rendered meaningless. The board of county commissioners' only role in library budget matters is to assign a property tax levy amount, which presently cannot exceed five mills, sufficient to satisfy the budgetary needs. The commissioners' function is thus purely ministerial with respect to the imposition of the levy.

Applying the holding presented in Attorney General Greely's opinion, Attorney General Mazurek issued his opinion in 1999 stating in pertinent part.

Big Horn County's funding of the library through the general fund does not allow county commissioners to usurp the library trustees' statutory authority in setting the library's budget and compensation for the library staff. In enacting the statutes regarding free public libraries, the legislature clearly intended that library trustees be given independent power to manage and operate libraries without the threat of being censored by a city or county government. See Mont. Code Ann. §§§§ 22-1-309, -310; 41 Op. Att'y Gen. No. 91 at 394-95. To hold that a board of county commissioners could usurp the library trustees' express statutory authority by simply funding the library's budget through the general fund would defeat the very

purpose of free public libraries and render meaningless §§§§ 22-1-301 to -317. Accordingly, if the county commissioners fund the library's budget through the general fund, the power to decide the budget and library staff compensation still rests with the library trustees as set forth in Mont. Code Ann. §§§§ 22-1-309 and -310.

Although the county commissioners cannot modify specific parts of the budget adopted by library trustees if the library's budget is funded through the general fund, the commissioners may limit the overall funding of the budget to five mills as if it were being funded pursuant to tax levy under Mont. Code Ann. §§ 22-1-304. To find otherwise would allow library trustees to adopt a budget that could assume the entire general fund levy. Moreover, in enacting §§ 22-1-304, the legislature only intended, absent a vote pursuant to §§ 22-1-304(2), that a county governing body be responsible for funding a library at a five-mill levy amount. To disregard that five-mill limit simply because the library is funded through the general fund would ignore the clear intent of the legislature...

2001 Amendment to 22-1-304(1)

The specific provision of Mont. Code Ann. § 22-1-304(1) (1986-1999) analyzed in Attorney General Greely's opinion and Attorney General Mazurek's opinion stated:

(1) 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. 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).

In 2001, the legislature amended the statute in adopting Chapter 574. Under 22-1-304(1) (2001) the legislature deleted the former last two sentences that read: "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." Those changes eliminated most of the numeric mill levy limitations for specific government purposes that existed previously.

Mont. Code Ann. § 22-1-304(1) (2005) now reads as follows.

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.

For purposes of this analysis, and as applied to the facts stated above, this statute applies.

II. WHETHER COUNTY COMMISSIONERS, THROUGH THEIR POWERS PROSCRIBED UNDER MONT. CODE ANN. §§ 7-4-2110, 7-6-2501 and 15-10-420, HAVE THE AUTHORITY TO REDUCE THE DISTRIBUTION OF REVENUE TO A LIBRARY BOARD'S ANNUAL BUDGET CREATED UNDER THE AUTHORITY OF MONT. CODE ANN. § 22-1-303?

Because of the 2001 amendment, Mont. Code Ann. § 22-1-304(1) (1999) can no longer be analyzed in the same fashion it has in the past. Instead, the amended language reflects that the county commissioners now have broader discretionary authority over the distribution of overall revenue to a county library through the county general fund as proscribed under Mont. Code Ann. § 7-6-2501 (2005).

Moreover, the powers and duties bestowed upon the county commissioners through Mont. Code Ann. §§ 7-4-2110 (2005) and 15-10-420 (2005) are also important, especially in light of the present financial difficulties the county is facing.

Mont. Code Ann. § 7-4-2110 (2005) reads as follows:

The board of county commissioners has jurisdiction and power, under the limitations and restrictions that are prescribed by law, to:

- (1) **supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing, or disbursing public revenue;**
- (2) see that the officers faithfully perform their duties;
- (3) direct prosecutions for delinquencies;
- (4) when necessary, require the officers to renew their official bonds, make reports, and present their books and accounts for inspection; and
- (5) require the officers to supervise staff in a manner that complies with personnel policies and procedures adopted by the county governing body.

[Emphasis added]

Mont. Code Ann. § 7-6-2501 (2005) reads as follows:

Subject to 15-10-420, the board of county commissioners may levy a tax annually on the taxable property of the county for county public or governmental purposes that is necessary to defray current expenses and may levy taxes that are required to be levied by special or local statutes.

[Emphasis added]

Mont. Code Ann. § 15-10-420 (2005) reads in pertinent part:

(1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

[Emphasis added]

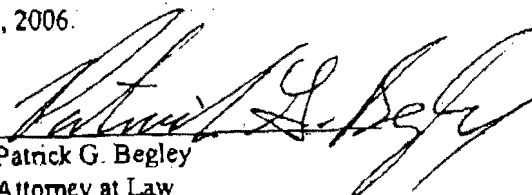
In place of the numeric mill levies, Mont. Code Ann. § 15-10-420, as amended by 2001 Mont. Laws, ch. 574, allows the county to levy sufficient mills to raise the amount of property tax raised in the previous year, subject to certain adjustments not pertinent here. Since the five-mill library levy has been eliminated, there is no longer a statutory basis to argue that the library board has the authority to require the commissioners to levy five mills for support of the library budget.

In each of the above statutes, the language is discretionary, not mandatory. This is critical, as it allows the commissioners flexibility in administering their duties with respect to the revenue available to fund the various taxing jurisdictions.

CONCLUSION

THEREFORE, in my opinion, the 2001 statutory changes adopted in 2001 Mont. Laws, ch. 574, did not delete the library board's authority to "determine" the amount of financial support required by the library, nor did the legislature confer on the county commissioners the authority to "modify" the determinations of the library board. Applying Mont. Code Ann. § 22-1-304(1), § 7-6-2501 and § 15-10-420 to the facts stated above, it appears clear that the county commissioners, using their broad discretionary authority can in fact reduce the distribution of revenue to a library board's annual budget if the revenue is not available, and since the five-mill library levy has been eliminated, there is no longer a statutory basis to argue that the library board has the authority to require the commissioners to levy five mills for support of the library budget.

Respectfully submitted this 10th day of January, 2006.



Patrick G. Begley
Attorney at Law
Felt, Martin, Frazier, Jacobs &
Rapkoch, P.C.