

TAXING Unit
Public Library

Legal

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

MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: RICHARD MILLER
Montana State Librarian

FROM: JIM SCHEIER JS
Assistant Attorney General

RE: Public Library as a "Taxing Unit"

DATE: December 9, 1994

You requested my legal opinion on the question of whether the holdings of 45 Op. Att'y Gen. No. 29, 45 Op. Att'y Gen. No. 25, and 42 Op. Att'y Gen. No. 126 apply to public libraries created under title 22, Mont. Code Ann. These opinions deal with the applicability of the taxation limitations imposed by Initiative 105 (I-105) to city-county boards of health (45 Op. Att'y Gen. No. 25) and rural fire districts (45 Op. Att'y Gen. No. 29 and 42 Op. Att'y Gen. No. 126).

In reviewing these opinions, it seems to me that the real question is whether a public library is a "taxing unit", as defined in Mont. Code Ann. § 15-1-101(2):

The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising revenue. [Emphasis added].

The definition is significant, because the term appears throughout I-105, which is codified in title 15, chapter 10, part 4, Mont. Code Ann. In 42 Op. Att'y Gen. No. 126, the Attorney General determined that a rural fire district operated by a board of trustees is a "taxing unit", and is therefore authorized to exceed the I-105 taxation limitation pursuant to the procedure outlined in what was then Mont. Code Ann. § 15-10-412(9) (currently subsection (10)). The Attorney General referred to his previous opinion in 42 Op. Att'y Gen. No. 80, where he determined that a rural fire

Richard Miller
Page 2
Memorandum of December 9, 1994

district fits within the definition of the term "taxing unit" in Mont. Code Ann. § 15-1-101(2):

A rural fire district is established by the board of county commissioners of the county in which the district is located. § 7-33-2101, MCA. The board of county commissioners may either operate the fire district itself or appoint a board of trustees to operate the district. § 7-33-2104, MCA. When a board of trustees has been appointed, its duties include preparing the district's budget and determining the tax levy, which is collected by the county. §§ 7-33-2105, 7-33-2109, MCA. Clearly a rural fire district is a "taxing unit" when it is operated by a board of trustees. However, when a rural fire district is operated by the county commissioners, the applicability of the term "taxing unit" is less clear. Where the county commissioners and not the fire district establish the tax levy for the district, the definition of "taxing unit" does not encompass the fire district. A "taxing unit" entails an entity that establishes its own tax levy.

42 Op. Att'y Gen. No. 80, at 314. Mont. Code Ann. § 7-33-2105, referred to in the above quote, provides in pertinent part:

(3) The trustees [of a rural fire district] shall prepare annual budgets and request special levies therefor.

As the Attorney General noted, Mont. Code Ann. § 7-33-2109 authorizes the board of county commissioners to actually levy and collect the tax to support the fire district.

The statutory provisions for the financial support of public libraries are similar. A public library is administered by a board of trustees appointed by either the city or county governing officials. Mont. Code Ann. § 22-1-308. The board of trustees possesses "broad powers and duties" reflecting "substantial autonomy from the governing body of the local governmental unit within which the library has been established". 41 Op. Att'y Gen. No. 91, at 394.

Similar to a rural fire district board of trustees, the public library board of trustees is required to "prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body." Mont. Code Ann. § 22-1-309(6). As in the case of rural fire districts, the governing body actually

Richard Miller
Page 3
Memorandum of December 9, 1994

levies and collects the tax necessary to support the library. Mont. Code Ann. § 22-1-304. See Mont. Code Ann. § 7-33-2109.

The only distinction that I can see is that Mont. Code Ann. § 7-33-2105 authorizes a rural fire district board of trustees to "request special levies" for the financial support of the district, whereas Mont. Code Ann. § 22-1-309(6) does not expressly authorize a library board of trustees to request a specific levy. I view this, however, as a distinction without substance. The procedure for the financing of both entities is virtually identical. As the Attorney General pointed out in 41 Op. Att'y Gen. No. 91, at 395:

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. . . . The board of county commissioners' only role in library budget matters is to assign a property tax levy amount, . . . sufficient to satisfy the budgetary needs. The commissioners' function is thus purely ministerial with respect to the imposition of the levy. [Emphasis added].

Although the specific tax levy amount is "assigned" by the governing body, that is, as the Attorney General noted, purely a ministerial act. The amount necessary to support the library is determined by the board of trustees, not the governing body.

In my opinion, a public library created under title 22, Mont. Code Ann., is sufficiently similar to a rural fire district to be classified as a "taxing unit", thus the holdings of the above-referenced Attorney General's Opinions are equally applicable to public libraries.

jms/ah
c: Darlene Staffeldt