

## I-105 LIMITATIONS: FACT SHEET

Since I-105 was passed by Montana's voters, the State Library has been advising public libraries in Montana that, although their boards have broad powers related to setting the budgets of their respective libraries, the limitations imposed under I-105 did not allow increased mill levies. But a recent development has caused us to reconsider this approach and to investigate further the possibilities that may exist. The Sanders County bookmobile held a vote in June 1994 at which it asked the voters for an increase above its millage which no longer produced sufficient revenue to operate the county-wide bookmobile service. The ballot, written by the county attorney, requested that this increased millage be for BY 1994-95 and for each fiscal year thereafter.

This situation was unique for several reasons -- the obvious one of overriding I-105 limitations -- and the fact that this vote was for more than one year. It had always been thought that libraries could override I-105 only by a one-year, emergency mill levy increase voted by the people. The Sanders County attorney felt that the approach used in this vote was "defensible" in a court of law, and the voters of Sanders County approved the increase.

The above vote led us to investigate whether or not public libraries might, as other types of districts have done, approach the voters to go beyond I-105 limits, and if so, how. Included with this memo are several legal opinions related to this question. The first of these is an opinion we requested from our Legal Services attorney, Jim Scheier. His response indicates that most public libraries (i.e., those under Title 22 MCA) may be considered "taxing units" under state law. Since there are provisions in state statute for allowing taxing units to seek voter approval beyond I-105 limitations, we wished to know if these avenues might be open to public libraries as well.

The second legal opinion enclosed (45 Op. Att'y Gen. No. 29) is written by current Attorney General Joseph Mazurek in response to a question about rural fire districts. The finding of this opinion are that:

- such districts may levy taxes in excess of I-105 limitations if the district can demonstrate to the electorate that it has insufficient funding to adequately operate the district.
- the governing body of the taxing unit must pass a resolution containing seven specified findings, estimates, summaries, and statements. (See page 2 of this opinion for the seven items required -- (a) through (g).)
- voter approval may be for multiple years, as long as the duration is specified.
- a particular type of level of financial emergency is not a condition of this statute.

These opinions do not address the situation in some libraries which are already at the maximum mill levies allowed under library-related statute (i.e., 5 mills or 7 mills). It also may be more difficult to use for those libraries which receive their support from their city's or county's general fund. In any case, any library investigating the possibility of using the information in this memo should consult with legal counsel.

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