

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU

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MEMORANDUM

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ATTORNEY WORK PRODUCT

TO: DARLENE STAFFELDT
Montana State Librarian

FROM: JIM SCHEIER JS
Assistant Attorney General

RE: AG Opinion

DATE: August 3, 2009

Enclosed is a copy of the Attorney General's Opinion that was issued on July 30, 2009. This is the opinion that included a prior draft that could have impacted the administration of public libraries. As you recall, we discussed the draft and you submitted comments to Chris Tweeten. In addition, I spoke with Chris and pointed out that some of the issues pertaining to libraries may be addressed by the Supreme Court in the ongoing appeal involving the Butte Library. Subsequently Chris decided that the Opinion would not specifically address or rule on these issues as they relate to public libraries.

As you will see, while the final version of the Opinion only addresses hospital districts, the final paragraph on page 7 seems to set the stage for future consideration of budgeting issues related to public libraries.

jms/clr
Enc.

ATTORNEY GENERAL
STATE OF MONTANA

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VOLUME 53

OPINION NO. 2

COUNTIES - Budget authority with respect to hospital districts;
COUNTIES - Budget powers in light of Mont. Code Ann. §§ 15-10-420, 7-6-4035 and -4036;
HEALTH CARE FACILITIES - Authority of county commission with respect to hospital district budget;
HOSPITAL DISTRICTS - Authority of county commission with respect to hospital district budget;
LOCAL GOVERNMENT - County budget powers in light of Mont. Code Ann. §§ 15-10-420, 7-6-4035 and -4036;
STATUTORY CONSTRUCTION - Construction of related statutes to give effect to all;
STATUTORY CONSTRUCTION - Effect of later adopted statute on earlier statutes dealing with same subject;
STATUTORY CONSTRUCTION - Presumption that legislation is intended to change existing law;
MONTANA CODE ANNOTATED - Sections 2-9-316, 7-6-2527, -4001, -4015, -4035, -4036, 7-34-2131, -2132, -2133, 15-10-402, -420, (1)(a), (b), -425, 22-1-304, 67-10-402(1);
MONTANA LAWS OF 2001 - Chapters 278, 574, section 84;
OPINIONS OF THE ATTORNEY GENERAL - 49 Op. Att'y Gen. No. 16 (2001), 49 Op. Att'y Gen. No. 5 (2001), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD:
1. Subject to Mont. Code Ann. § 15-10-420, a board of county commissioners may levy mills to support a county hospital district, even if the district is newly created and no mills have previously been levied for district purposes.
 2. For purposes of applying Mont. Code Ann. § 15-10-420 to a mill levy for a county hospital district under Mont. Code Ann. § 7-34-2133, the "governmental entity" levying the tax is the county, not the district.
 3. Under Mont. Code Ann. § 15-10-420, county property taxes are limited by the number of mills required to raise the same amount of tax revenue as was raised in the immediately previous year,

increased by (a) one-half of the average rate of inflation for the previous year, and (b) by any mills carried over from the previous year under Mont. Code Ann. § 15-10-420(1)(b). The amount of tax revenue raised in 1996, as provided in Mont. Code Ann. § 15-10-420, is no longer the limiting factor.

4. The Commissioners may provide funding for a hospital district from the general mill levy or from (a) mills levied under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County under Mont. Code Ann. § 7-1-2133 and for all other purposes covered by § 420 stays within the cap provided by § 420; (b) from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425; or (c) from bonds sold pursuant to Mont. Code Ann. § 7-34-2131 to defray the cost of "acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital."
5. Montana Code Annotated § 7-34-2133 does not obligate the county to fund the budget proposed by the county hospital district trustees without change.

July 30, 2009

Granite County Board of Commissioners
P.O. Box 925
Philipsburg, MT 59858-0925

Dear Commissioners:

[P1] You have requested my opinion regarding the funding of the newly created Granite County Hospital District. I have identified the issues presented as follows:

1. May a newly created hospital district levy mills to support its budget under the provisions of Mont. Code Ann. § 7-34-2133 where it has not previously levied mills?

2. How do Mont. Code Ann. § 15-10-420, as amended in 2001, and other statutory amendments enacted in 2001, affect the county mill levy for hospital purposes?

Your letter informs me that the voters of Granite County have approved the creation of a new hospital district and have elected the Trustees of the district. Since the district is new entity, the County has not previously levied mills or budgeted funds needed to operate the district.

[P2] In 2001, the Montana legislature made several changes in the funding of local government services. The most sweeping of these changes is found in 2001 Mont. Laws, ch. 574. Prior to 2001, Mont. Code Ann. § 15-10-420 (“§ 420”) provided a complex process to limit local government tax revenues, taking into account the existence of numerous statutes that provide for special mill levies in specified amounts tied to specific purposes, as Mont. Code Ann. § 7-34-2133 does for hospital districts. The 2001 amendments to § 420 scrapped the existing process and replaced it with a mill levy cap. The cap encompasses almost all local government mill levies, including special levies, and limits the local government’s mill levies for almost all purposes to the number of mills needed to provide the same revenue as was raised in the prior year, indexed for inflation. The amended § 420 also allows a local government to carry mills forward to a subsequent year when the entire amount of revenue that might be raised under the cap has not been raised.

[P3] The same bill amended a large number of special mill levy statutes in two basic ways. These amendments eliminated numerical mill levy caps found in the special levy statutes. Section 84 of the bill amended Mont. Code Ann. § 7-34-2133 to eliminate the three mill limit for hospital districts. It also modified all of the special levy statutes, including Mont. Code Ann. § 7-34-2133, to make clear that all of the special levies were “subject to 15-10-420.”

I.

[P4] In 49 Op. Att’y Gen. No. 5 (2001), Attorney General McGrath answered several questions posed by the City of Great Falls under § 420 relating to the city airport. One of the issues presented was whether the limit on mills was calculated by reference to specific programs for which the legislature had provided levy authority, or by reference to the total number of mills levied by the city for all purposes.

[P5] In response to that question, Attorney General McGrath held that § 420 limited the total number of mills levied by a local government, regardless of the purpose for which it levies the mills. He stated:

In calculating the City's mill levy for this year, it does not matter whether the City levied two mills, or for that matter any mills, for airport purposes under Mont. Code Ann. § 67-10-402(1) in any prior year. **Under [§ 420], the City is authorized to levy a property tax for the airport, and as long as the City's total property tax collections covered by the mill levy cap in Mont. Code Ann. § 15-10-420(1)(a) do not exceed those assessed in the prior year, the airport levy is permissible. It is simply not relevant under this statutory scheme whether the City levied a tax under [the airport special tax levy statute] in any prior year.**

(Emphasis added.) The ability of the county to levy mills for the hospital district therefore is not affected by the fact that the district is new or by the fact that no mills have been levied for the district in past years. Since the taxing authority in § 7-34-2133 is "subject to 15-10-420," it cannot be argued that the hospital levy is exempt from the mill levy limits.

II.

[P6] Under § 420, the "governmental entity" for purposes of calculating the mill limit is the commission, not the hospital district. Montana Code Annotated § 7-34-2133 requires "the board of county commissioners" to levy the tax, not the hospital district board, just as the tax levy for the Great Falls airport was levied by the city commission, not by the airport board.

III.

[P7] Moreover, under the 2001 amendment to section 420, the amount of taxes levied in 1996 is no longer a limiting factor. The 2001 amendment to section 420 specifically modified the reference to 1996 in Mont. Code Ann. § 15-10-402. As amended, § 420 provides that the limiting factor is now the tax revenue generated in the prior year, not in 1996. The Board of Commissioners may levy the maximum mills allowed by § 420.

[P8] Accordingly, there are several options by which a Board of Commissioners may fund a hospital district. If a hospital district exists or is created, the Commissioners may provide funding from the general mill levy. They may also levy mills under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County for the

hospital and for all other purposes covered by § 420 stays within the cap provided by § 420. The county may also provide funding for the hospital from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425. Finally, Mont. Code Ann. § 7-34-2131 allows a hospital district to issue bonds to defray the cost of “acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.”

IV.

[P9] One other point deserves mention. Montana Code Annotated § 7-34-2132 requires the hospital trustees to present the county commission a budget and to “certify the amount necessary and proper for the ensuing year.” Montana Code Annotated § 7-34-2133 then provides that the commissioners “shall, annually at the time of levying county taxes, fix and levy a tax on the taxable value of all taxable property within the hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.” In light of the budget statutes adopted in 2001, an argument that this language obligates the Granite County Commissioners to fund the district Trustees’ proposed budget without change cannot be accepted.

[P10] First, that conclusion produces an absurd result. It would allow the hospital district board to prevent the local governing board from addressing other important governmental responsibilities. Since the county commission is responsible for the provision of numerous public services specified by law, see Mont. Code Ann. § 7-6-2527 (enumerating nonexclusive list of permissible county expenditure of property tax revenue), the legislature cannot have intended to make hospitals a superior priority that could consume so much of the county budget that other needs would go unfunded. Compare Skinner Enters. v. Lewis & Clark County Bd. of Health, 286 Mont. 256, 271, 950 P.2d 733, 742) (1997) (construing statutes together avoids absurd results).

[P11] Second, other actions of the 2001 legislature suggest that the overall intention of the legislature was to vest the local government with the authority to approve the budgets of local boards and commissions. 2001 Mont. Laws, ch. 278, enacted provisions that have been codified at Mont. Code Ann. §§ 7-6-4035 and -4036. Section 7-6-4035 provides, in pertinent part: “The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.” Section 7-6-4036 provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after the approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-

4034. . . . Each levy . . . except for a judgment levy under 2-9-316 or 7-6-4015, is subject to 15-10-420.

The legislature made these provisions part of the "Local Government Budget Act." Mont. Code Ann. § 7-6-4001.

[P12] Making the "proposed budget" of the hospital district subject to "approval" by the Commissioners, as Mont. Code Ann. § 7-6-4035 requires, would be meaningless if the Hospital Board could nevertheless compel the Commissioners to approve its budget proposal intact. It is presumed that the legislature does not intend to require meaningless acts, Peris v. Safeco Ins., 276 Mont. 486, 492, 916 P.2d 780, 784 (1996) ("This Court presumes that the legislature does not pass meaningless legislation."), and that a legislative enactment is intended to change existing law, Cantwell v. Geiger, 228 Mont. 330, 333, 742 P.2d 468, 471 (1987) ("In construing a statute, this Court presumes that the legislature intended to make some change in existing law by passing it.").

[P13] The net effect of the 2001 local government budget enactments is to ensure that local governing bodies have sufficient flexibility to provide necessary services within a balanced and limited budget. The conclusion that the county commissioners would be required to accept and budget for the proposed budgets of a hospital district is inconsistent with the flexibility provided by § 420 and the broad budget authority provided in the Local Government Budget Act.

[P14] The guidelines for the construction of statutes recognize that all statutes relating to a particular subject are to be read together in a way that gives effect to all, City of Billings v. Panasuk, 253 Mont. 403, 406, 833 P.2d 1050, 1052 (1992), and that the meaning of earlier statutes may be affected by later-adopted statutes dealing with the same subject matter, see State v. Marchindo, 65 Mont. 431, 443, 211 P. 1093, 1097 (1922) ("It is the rule of construction that, where a new remedy or mode of procedure is authorized by a new statute, and the new procedure is inconsistent with the former one, the latest expression of legislative will must govern; however, to the extent only as provided in the new Act.") These principles apply to the construction of Mont. Code Ann. § 7-34-2133 in light of the later adopted provisions of Mont. Code Ann. §§ 7-6-4035 and -4036.

[P15] In my opinion, the best way to provide meaning and effect to all of these statutes is to construe the later-adopted provisions of §§ 7-6-4035 and 7-6-4036 to control the interpretation of § 7-34-2133 and negate an interpretation that would require the county commissioners to rubber-stamp the proposed budgets of hospital districts. Under the

2001 statutes, the Commissioners have the authority to review and adjust the budgets proposed by hospital district trustees.

[P16] I am aware that other opinions of this office have held that a local governing body is obligated to fund the budget of a public library as proposed by the library trustees without change. 49 Op. Att'y Gen. No. 16 (2001); 48 Op. Att'y Gen. No. 3 (1999); 41 Op. Att'y Gen. No. 91 (1986). The soundness of the holdings in these opinions is an issue not squarely presented by your request. For that reason, I express no opinion here regarding the effect of the 2001 amendments to the local government budget laws to the funding of a public library, leaving those questions for consideration when this office receives a request that presents those issues for review.


THEREFORE IT IS MY OPINION:

1. Subject to Mont. Code Ann. § 15-10-420, a board of county commissioners may levy mills to support a county hospital district, even if the district is newly created and no mills have previously been levied for district purposes.
2. For purposes of applying Mont. Code Ann. § 15-10-420 to a mill levy for a county hospital district under Mont. Code Ann. § 7-34-2133, the "governmental entity" levying the tax is the county, not the district.
3. Under Mont. Code Ann. § 15-10-420, county property taxes are limited by the number of mills required to raise the same amount of tax revenue as was raised in the immediately previous year, increased by (a) one-half of the average rate of inflation for the previous year, and (b) by any mills carried over from the previous year under Mont. Code Ann. § 15-10-420(1)(b). The amount of tax revenue raised in 1996, as provided in Mont. Code Ann. § 15-10-420, is no longer the limiting factor.
4. The Commissioners may provide funding for a hospital district from the general mill levy or from (a) mills levied under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County under Mont. Code Ann. § 7-1-2133 and for all other purposes covered by § 420 stays within the cap provided by § 420; (b) from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425; or (c) from bonds sold pursuant to Mont. Code Ann. § 7-34-2131 to defray the cost of "acquisition, furnishing, equipment, improvement, extension, and

betterment of hospital facilities and to provide an adequate working capital for a new hospital.”

5. Montana Code Annotated § 7-34-2133 does not obligate the county to fund the budget proposed by the county hospital district trustees without change.

Sincerely,



STEVE BULLOCK
Attorney General

sb/cdt/jym

PUBLIC LIBRARY DISTRICTS

22-1-701. Public library districts -- purpose -- territory.

- (1) The purpose of this part is to provide a method for:
 - (a) establishing, equipping, administering, and funding public libraries; and
 - (b) contracting for library services from existing public libraries.
- (2) A public library district may contain the entire territory of a county, the territory of part of a county, or territory in more than one county. A public library district may include incorporated municipalities within a county.
- (3) The territory included in a public library district must contain a taxable value of at least \$5 million.

[Last noted date: 2001]

22-1-702. Creation or enlargement of public library district.

- (1) Proceedings for the creation or enlargement of a public library district or the conversion of a public library to a public library district may be initiated by:
 - (a) a petition signed by not less than 15% of the qualified electors who reside within the proposed district or the area to be added to an existing district; or
 - (b) a resolution of intent adopted by the county governing body, calling for the creation of a district.
- (2) The petition must contain:
 - (a) the boundaries of the proposed public library district;
 - (b) a map showing the boundaries;
 - (c) subject to 15-10-420, the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and
 - (d) the proposed number of members on the board of trustees. The number of members must be five or seven.
- (3) When the territory to be included in the proposed public library district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 15% of the qualified electors of the territory within the county proposed for inclusion in the district.
- (4) Upon receipt of a petition to create a public library district, the county clerk shall examine the petition and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.
- (5) The text of the petition must be published as provided in 7-1-2121 in each county in which territory of the proposed public library district lies.
- (6) At a hearing on the proposed public library district, the county governing body shall hear testimony:
 - (a) of all interested persons on whether a district should be created;
 - (b) regarding the proposed boundary, the property tax mill levy, and the number of members of the board of trustees; and
 - (c) on any other matter relating to the petition.
- (7) After the hearing, if the county governing body determines that the proposed public library district should be created, it shall by resolution:
 - (a) set the boundaries of the proposed district;
 - (b) set the maximum mill levy for the proposed district;
 - (c) set the number of members to be on the board of trustees; and
 - (d) call for an election on the question of whether to create the district. The election may be:

- (i) held in conjunction with a regular or primary election; or
- (ii) conducted by mail ballot in accordance with the provisions of Title 13, chapter 19.
- (8) Except as provided in 22-1-705, if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall adjust the boundaries of the district to exclude the territory served by the public library.

[Last noted date: 2001]

22-1-703. Election on creation of district.

(1) The election on the question of whether to create a public library district must be conducted as provided in Title 13.

(2) Only qualified electors residing within the proposed public library district may vote on the question of whether to create the district.

(3) The question of creating a public library district must be submitted to the electors in substantially the following form:

FOR the creation of a public library district that may levy not more than ... mills of property tax for the operation of the district.

AGAINST the creation of a public library district.

[Last noted date: 2001]

22-1-704. Formation of public library district -- appointment of initial board of trustees.

(1) If a majority of the votes cast at the election in the territory of each county included in the proposed public library district approve the formation of the district, the governing body of each county shall, within 10 days of the receipt of the official canvass of the result, certify that the district is formed.

(2) Within 30 days after the certification of the formation of the public library district, the governing body of each county with territory included in the district shall jointly appoint the initial members of the district's board of trustees. The members shall serve until their successors are elected and qualified.

[Last noted date: 2001]

22-1-705. Consolidation of existing public libraries or public library districts.

(1) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a public library district, the territory served by the public library may be consolidated into the district upon the adoption of a resolution, following a public hearing, by the governing body of the city or county that established the public library and by the board of trustees of the district.

(b) Any existing bonded indebtedness against the territory served by the public library remains the indebtedness of the original territory and must be paid by levies on the original territory.

(2) The territory of an existing public library district may be consolidated into a contiguous district upon the adoption of a resolution, following a public hearing, by the board of trustees of each district. The governing board of the county containing the largest percentage of territory in the district shall appoint the board of trustees for the consolidated district. The appointed trustees shall serve until their successors are elected, in accordance with the provisions of 22-1-706.

[Last noted date: 2001]

22-1-706. Election of board of trustees -- compensation -- removal -- single-member trustee districts.

(1) After appointment of the initial members of the board of trustees, all members must be elected by the electors of the public library district.

(2) The election of members to the board of trustees must be held in conjunction with the annual school elections held pursuant to 20-3-304.

(3) (a) A candidate for the office of trustee of the public library district must be a resident of the district and must be nominated by petition, signed by at least five electors of the district and filed with the office of the election administrator not earlier than 135 days or later than 75 days prior to the election day.

(b) If the district lies in more than one county, the petition for nomination must be presented to the election administrator whose county contains the largest percentage of territory in the district.

(4) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a nomination petition for a position. If a nomination petition is not filed for an office, the county governing body of the county containing the largest percentage of the territory in the public library district shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office.

(5) The term of office of an elected board member begins on the date that the board member is elected and qualified. The term of office of an elected member is 4 years, except that a simple majority of the members of the first elected board shall serve a term of 2 years, with the minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

(6) A vacancy in the office of a member must be filled by appointment by the remaining members of the board. The term of the appointed member expires upon the election and qualification of an elected successor or upon the election of a member to fill the unexpired term of the vacant office. The election must be held at the next scheduled school election held pursuant to 20-3-304.

(7) Members of the board of trustees serve without compensation.

(8) A trustee may be removed from office by a court of competent jurisdiction pursuant to state law governing the removal of elected officials. If charges are brought against a trustee and if good cause is shown, the governing body of the county containing the largest percentage of territory in the public library district may suspend the trustee until the charges can be heard in a court of competent jurisdiction.

(9) (a) If the trustees determine that it is in the best interest of the electors of the public library district, they shall:

(i) propose the creation of a single-member trustee district plan with districts that are as compact in area and as equal in population as possible;

(ii) schedule and hold a public hearing on the plan; and

(iii) publish a notice of the public hearing as provided in 7-1-2121.

(b) After the public hearing is held, the trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted, the trustees shall publish notice of its adoption as provided in 7-1-2121.

(c) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan, and the election of each member must be submitted to the electors of the trustee district in which the candidate resides.

22-1-707. Duties and powers of board of trustees.

- (1) The board of trustees of a public library district shall:
- (a) operate and maintain library property within the district and may conduct programs relating to libraries and make improvements to district property as the board considers appropriate;
 - (b) prepare annual budgets as required by the county governing body or bodies;
 - (c) pay necessary expenses of district staff members when on business of the district; and
 - (d) prepare and submit any records required by the Montana state library.
- (2) The board has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations. In the exercise of this general grant of powers, the board may:
- (a) (i) employ or contract with administrative, professional, or other personnel necessary for the operation of the district; or
 - (ii) contract with other entities to provide or receive library services and to pay out or receive funds for those library services;
 - (b) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;
 - (c) (i) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and equip, operate, and maintain the buildings and facilities; or
 - (ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;
 - (d) adopt by resolution, bylaws and rules for the operation and administration of the district;
 - (e) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in 22-1-708;
 - (f) with the concurrence of the county governing body or bodies, accept donations of land or facilities within the district to be used for district purposes;
 - (g) accept donations and devises of money or personal property; and
 - (h) exercise other powers, not inconsistent with the law, necessary for the operation and management of the district.

[Last noted date: 2001]

22-1-708. Public library district budget -- property tax levy.

- (1) The board of trustees shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory in the public library district at the regular budget meetings as prescribed in Title 7, chapter 6, part 40, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.
- (2) Subject to 15-10-420, the county governing body shall, annually at the time of levying county taxes, fix and levy a tax on all taxable property within the public library district sufficient to raise the amount certified by the board of trustees and approved by the electors. The tax levied may not in any year exceed the maximum amount approved by the electorate in 22-1-703 or 22-1-709.

[Last noted date: 2001]

22-1-709. Election to change maximum property tax mill levy.

(1) The maximum property tax mill levy authorized for the operation of a public library district may be changed by an election on the question of changing the maximum mill levy.

(2) A vote on the question of raising or lowering the maximum property tax mill levy in the public library district may be initiated by:

- (a) a petition signed by not less than 15% of the electorate of the district; or
- (b) a resolution of the board of trustees.

(3) The petition must set forth the proposed new maximum mill levy for the operation of the district.

(4) Upon receipt of a petition for a change in the maximum mill levy, certified by the county clerk as sufficient under this section, or upon receipt of a resolution for a change adopted by the board of trustees, the county governing body shall submit to the electorate of the public library district, at the next regular or primary election, a ballot question on changing the maximum mill levy. The election must be held as provided in Title 13. The question must be submitted to the electors of the district in substantially the following form:

FOR changing the authorized maximum property tax mill levy for the operation of the public library district from to

AGAINST changing the authorized maximum property tax mill levy for the operation of the public library district.

[Last noted date: 2001]

22-1-710. Dissolution of public library district.

(1) A public library district may be dissolved after an election on the question of dissolving the district. The process of dissolving the district may be initiated by a petition of 15% of the electorate of the district or by a resolution of intent to dissolve the district adopted by either the board of trustees or the governing body of the county in which territory of the district is located.

(2) Upon receipt of a petition that has been certified by the county clerk as sufficient under this section or upon adoption of a resolution of intent, the county governing body shall hold a public hearing on the question of dissolving the public library district. Notice of the hearing must be published as provided in 7-1-2121.

(3) At the public hearing, the county governing body shall hear testimony of interested persons regarding the dissolution of the public library district. After the public hearing, the county governing body may either submit the question of dissolving the district to the electorate of the district or it may call for a public hearing on the question of altering the boundaries of the district. If the county governing body calls for a public hearing on the question of altering the boundaries of the district by the withdrawal of territory, it shall publish notice of the hearing as provided in 7-1-2121. The notice must state the boundaries of the area proposed to be withdrawn from the district. After hearing testimony at the hearing, the county governing body may submit the question of either dissolving the district or altering the district by the withdrawal of specified territory from the district to the electorate of the district.

(4) The question must be submitted by a resolution calling for an election on either dissolving the public library district or altering the boundaries of the district by the withdrawal of land from the district. The county governing body shall schedule the election in conjunction with any other regularly scheduled election. The election on the question must be conducted as provided in Title 13.

(5) The question of withdrawal of territory under this section must be voted upon separately by the electorate of the territory to be withdrawn and the electorate of the balance of the territory of the public library district. The question fails unless a simple majority of those

voting on the question in each of the two territories authorize altering the district boundary. If the question passes, the boundary alteration is effective the following January 1. If the question fails, the county governing body shall by resolution call for an election on the question of dissolving the district.

[Last noted date: 2001]

22-1-711. Effect of dissolution.

(1) If dissolution of a public library district is authorized by a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

- (a) 6 months after the date of the filing of the order; or
- (b) certification by the board of trustees that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) (a) If debts or obligation of the public library district remain unsatisfied after the dissolution of the district, the county governing body shall, subject to 15-10-420 and for as long as necessary, levy a property tax in an amount not to exceed the amount authorized for the district, on all taxable property that is in the territory formerly comprising the district, to be used to discharge the debts of the former district.

(b) If the electors of the district lowered the maximum amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body may, subject to 15-10-420, levy a property tax not to exceed the levy authorized prior to the reduction of the maximum levy for the discharge of the district's obligations.

(3) Any asset of the public library district remaining after all debts and obligations have been discharged becomes the property of the county in which the asset is located.

[Last noted date: 2001]

LIBRARY RECORDS CONFIDENTIALITY ACT

22-1-1101. Short title.

This part may be cited as the "Montana Library Records Confidentiality Act".

[Last noted date: 1985]

22-1-1102. Definitions.

As used in 22-1-1103, the following definitions apply:

(1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.

[Last noted date: 1985]

22-1-1103. Nondisclosure of library records.

(1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

[Last noted date: 1985]

22-1-1111. Penalty.

Any person who violates 22-1-1103 is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

[Last noted date: 1985]

CULTURAL AND AESTHETIC PROJECTS

22-2-301. Cultural and aesthetic projects grants.

(1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in 15-35-108 must submit a grant proposal to the cultural and aesthetic projects advisory committee, in care of the Montana arts council, by August 1 of the year preceding the convening of a regular legislative session.

Cooper, Bob

From: Strege, Karen
Sent: Wednesday, June 30, 2004 8:32 AM
To: Cooper, Bob; Staffeldt, Darlene
Subject: FW: library district laws

I agree with Jim's proposals. Do you? If so, I will have Kris send the draft to the Governor's office when she returns next Tuesday.

Karen

-----Original Message-----

From: Scheier, James
Sent: Monday, June 28, 2004 4:31 PM
To: Strege, Karen
Subject: library district laws

Karen,

Thanks for your most recent emails regarding proposed changes to the laws governing public library districts.

Now that I understand your rationale for amending the statute defining public library, I have put together some proposed amendments (attached) to accomplish what you want. I don't believe it is necessary to amend the definition of the term "public library" in 22-1-301, but I have included amendments in 22-1-326 through 22-1-331, which deal with state aid to public libraries, to authorize the distribution of state aid to library districts as well. Let me know if this will work for you.

Regarding the authority of district trustees to set up a depreciation reserve fund, I agree with your analysis. Attached are some proposed amendments (please note that the amendment to 22-1-707 also includes the amendment authorizing the district to own and hold title to buildings and facilities).



library district
revisions.doc...



depreciation
reserve fund.doc

22-1-326. State aid to public libraries and public library districts. (1) As used in 22-1-326 through 22-1-331, "public library" means a library created under Title 7 or under 22-1-301 through 22-1-317.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries and public library districts created and operated under 22-1-701 through 22-1-711. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries and public library districts;

(b) augment and extend services provided by public libraries and public library districts;

and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries or public library districts. The commission may withhold a distribution to a library or district that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if such a decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329.

22-1-327. State aid -- per capita -- per square mile. The commission shall distribute grants to public libraries and public library districts on a per capita and per square mile basis.

22-1-330. Commission rulemaking authority. The commission may adopt rules and procedures for:

(1) the distribution of state aid to public libraries and public library districts on a per capita and per square mile basis;

(2) issuance of state multibranch cards;

(3) reimbursement for interlibrary loan lending;

(4) distribution of base grants provided for in 22-1-331; and

(5) the composition of the library federation board of trustees, as provided in 22-1-404.

22-1-707. Duties and powers of board of trustees.

(1) The board of trustees of a public library district shall:

(a) operate and maintain library property within the district and may conduct programs relating to libraries and make improvements to district property as the board considers appropriate;

(b) prepare annual budgets as required by the county governing body or bodies;

(c) pay necessary expenses of district staff members when on business of the district; and

(d) prepare and submit any records required by the Montana state library.

(2) The board has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations. In the exercise of this general grant of powers, the board may:

(a) (i) employ or contract with administrative, professional, or other personnel necessary for the operation of the district; or

(ii) contract with other entities to provide or receive library services and to pay out or receive funds for those library services;

(b) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;

(c) (i) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district, and may own and hold title to such buildings and facilities, and equip, operate, and maintain the buildings and facilities; or

(ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;

(d) adopt by resolution, bylaws and rules for the operation and administration of the district;

(e) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in 22-1-708;

(f) with the concurrence of the county governing body or bodies, accept donations of land or facilities within the district to be used for district purposes;

(g) accept donations and devises of money or personal property; and

(h) establish a library depreciation reserve funds as authorized and described in [Sections 1 through 3].

(i) exercise other powers, not inconsistent with the law, necessary for the operation and management of the district.

NEW SECTION. Library depreciation reserve fund authorized.

The trustees of a public library district may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve district library services.

NEW SECTION. Moneys for library depreciation reserve fund.

Moneys for the library depreciation reserve fund are those funds that have been allocated for district library services in any year but which have not been expended by the end of the year. Such moneys include but are not limited to county appropriations, federal revenue sharing funds, and public and private grants.

NEW SECTION. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

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MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: KAREN STREGE
Montana State Librarian

FROM: JIM SCHEIER
Assistant Attorney General

RE: Amendments to Public Library Districts Laws

DATE: June 28, 2004

You asked me to review draft amendments to the laws governing public library districts.

22-1-301

You have proposed amending Montana Code Annotated § 22-1-301(3) by adding a reference to 22-1-702 to the definition of the term "public library." In my opinion it is not necessary or appropriate to amend the statute in that fashion. 22-1-301(3) defines "public library" as a library created pursuant to 22-1-303 through 22-1-317. There are no public libraries "created" under the statutes that govern the creation and operation of public library districts, thus it is not appropriate to refer to 22-1-702 in the definition of "public library."

22-1-702 and 22-1-705

You have proposed amending Montana Code Annotated § 22-1-702 by adding language in subsection (8) that would have the effect of including territory served by an existing public library into the district. The problem, as I see it, is that the changes you have proposed would appear to remove any discretion from the governing body of the city or county that established the public library that is to be absorbed into the district. Your

proposed language states: "The governing body of the library to be included *shall* transmit a resolution, following a public hearing, *indicating support* for such inclusion . . .

" (emphasis added). This places sole discretion in the governing bodies within the proposed district to determine whether the territory served by an existing public library should be included in the district, while the governing body of the city or county that established the public library is compelled to pass a resolution indicating its support of the decision. I seriously doubt that such a statutory scheme would survive a court challenge.

Under the current procedure, if all or part of the territory served by an existing public library district is included within the boundaries of the new district, the governing body of the county shall (except as provided in 22-1-705) adjust the boundaries of the district to exclude that territory from the district boundaries. However, pursuant to the procedure set out in 22-1-705, the territory served by the existing public library may be consolidated into the district if the governing body of the city or county that established the library adopts a resolution to that effect, following a public hearing. In addition, in order for the consolidation to occur the public library district trustees must also adopt a resolution to that effect.

Your proposed amendments to 22-1-705 essentially retain the permissive nature of consolidation, but that would be inconsistent with the mandatory nature of consolidation that you have proposed pursuant to your amendments to 22-1-702.

If your intent is to allow territories served by existing public libraries to be consolidated into a new public library district when the district is originally formed, I think that can be accomplished without any amendments to 22-1-702, and with just a minor amendment to 22-1-705:

22-1-705. Consolidation of existing public libraries or public library districts. (1) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a public library district, the governing body of each county with territory included in the district shall notify the governing body of the city or county that established the public library that the territory served by the public library is included in the district boundaries. ~~¶~~The territory served by the public library may be consolidated into the district upon the adoption of a resolution, following a public hearing, by the governing body of the city or county that established the public library, ~~and by the board of trustees of the district.~~

(b) Any existing bonded indebtedness against the territory served by the public library remains the indebtedness of the original territory and must be paid by levies on the original territory.

(2) The territory of an existing public library district may be consolidated into a contiguous district upon the adoption of a resolution, following a public hearing, by the board of trustees of each district. The governing board of the county containing the largest percentage of territory in the district shall appoint the board of trustees for the consolidated district. The appointed trustees shall serve until their successors are elected, in accordance with the provisions of 22-1-706.

This would eliminate the requirement that the trustees of the public library district also adopt a resolution approving the consolidation. I see no need for that, since the county or counties that created the district will have already determined that the territory of the existing public library should be included in the district. It would be redundant to require the library district trustees to also adopt a resolution approving consolidation of the territory into the district.

22-1-707

Your proposed amendment to Montana Code Annotated § 22-1-707(2)(c)(i) would explicitly provide that the district board of trustees has the authority to own and hold title to buildings and facilities. The proposed amendment looks fine.

Your proposed amendment that would add subsection (h) to 22-1-707(2) may have to be revised. Under your proposed amendment, the district board of trustees would have the authority to establish a library depreciation reserve fund. However, since the governing body of a city or county typically controls the funds for library service, that is the entity that should be given authority to establish a depreciation reserve fund (not the library district board of trustees). Montana Code Annotated § 22-1-305 authorizes the governing body of a city or county, or a combination of each, to establish a depreciation reserve fund for the replacement and acquisition of property, capital improvements, etc., necessary to maintain library services. Thus, rather than including a similar provision in the existing statute that provides for the duties and powers of the district board of trustees, I would suggest several new sections, with the following language:

NEW SECTION. Library depreciation reserve fund authorized.

The governing body of each county that has territory that is included in a public library district may establish a library depreciation reserve fund for

the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve district library services.

NEW SECTION. Moneys for library depreciation reserve fund.

Moneys for the library depreciation reserve fund are those funds that have been allocated for district library services in any year but which have not been expended by the end of the year. Such moneys include but are not limited to county appropriations, federal revenue sharing funds, and public and private grants.

NEW SECTION. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

jms

Cooper, Bob

From: Cooper, Bob
Sent: Monday, June 21, 2004 11:09 AM
To: Strege, Karen
Cc: Staffeldt, Darlene
Subject: District law changes

Karen.

Here are my thoughts on the district law changes you proposed. The attached file contains my language change suggestions.

First the simple things:

The change in the public library definition in 22-1-301(3) to include public library districts (22-1-702) looks good.

The placement and language you added concerning districts being allowed to hold title to property in 22-1-707 (2)(c)(i) looks good.

I agree that the transfer of property appears to be covered by 22-1-707 (2)(c)(ii).

Your inclusion of the library depreciation fund under 22-1-707 (2)(h) looks like the best place to put it. I have suggested a change to 22-1-305 to make it clear that the library district governing authority (in reality, the public library district board) has the authority to establish this fund and does not need to rely on a city or county government to do it on the district's behalf.

Then the more complicated things:

I agree with Darlene's suggested changes to 22-1-702 (8) to drop the word "Except." I have made an additional language change to (8) in hopes of clarifying the free will of the city in these consolidation matters.

If any our proposed changes to 22-1-702 are made I think we then need to look at 22-1-705. I have suggested a language change here to deal with the difference between consolidating a city library into an existing district and including a city library in a proposed district.

Questions?

Bob

Bob Cooper
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District law changes
draft.doc...

Tracking:

Recipient

Strege, Karen
Staffeldt, Darlene

Delivery

Delivered: 6/21/2004 11:09 AM
Delivered: 6/21/2004 11:09 AM

Read

Read: 6/21/2004 11:11 AM

Bob's Suggested Language Changes to the Library District Laws 6-21-04

22-1-305. Library depreciation reserve fund authorized.

Original:

The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, or city-county library services.

Suggested replacement:

The governing body of any city or county or a combination of city and county or public library district in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, ~~or city-county,~~ or district library services.

22-1-702. Creation or enlargement of public library district

Darlene's original:

(8) If all or part of the territory served by an existing public library, as defined in 22-1-326 is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall ~~adjust~~ set the boundaries of the district to ~~exclude~~ include the territory served by the public library.

Suggested replacement:

(8) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326 is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall ~~adjust~~ set the boundaries of the district to ~~exclude~~ include the territory served by the public library provided that in the case of a city, combined city and county, or a library created under Title 7 the governing body of the municipality to be included adopt a resolution, following a public hearing, indicating support of such inclusion.

(b) Any existing bonded indebtedness against the territory served by the public library remains the indebtedness of the original territory and must be paid by levies on the original territory.

22-1-705 Consolidation of existing public libraries or public library districts.

Original:

(1) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a public library district, the territory served by the public library may be consolidated into the district upon the adoption of a resolution,

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MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: KAREN STREGE
Montana State Librarian

FROM: JIM SCHEIER
Assistant Attorney General

RE: Public Library Districts

DATE: June 22, 2004

Your recent memo asks five questions regarding the laws governing public library districts. In addition, Darlene Staffeldt, in an email to me dated June 4, 2004, asked a question about the process whereby cities may be included in a county-wide library district.

Question 1 *It appears that the language of the resolution allowed in Montana Code Annotated § 22-1-702(1) is not specified. If so, should the law be amended to provide that the language of the resolution include the same information as the petition?*

There are actually two different "resolutions" referred to in Montana Code Annotated § 22-1-702. The first resolution is described in subsection (1)(b) of the statute, as a "resolution of intent." This is one of the methods that the county governing body may utilize to *begin the process* of creating a district. It is simply a resolution indicating the county governing body's intent to "[call] for the creation of a district." Montana Code Annotated § 22-1-702(1)(b).

There would then have to be a public hearing on the question. Following the hearing, if the county governing body determines that the district should be created, it adopts another resolution, which must include all the information set out in Montana Code Annotated § 22-1-702(7). As you can see, the information that is required to be included in a

resolution adopted under subsection (7) is the same information that is required to be included in a petition described in subsection (2) of the statute. Therefore, in my opinion there is no need to amend Montana Code Annotated § 22-1-702 to accomplish what you have suggested.

Question 2 *Describe the process by which an existing public library would become part of a library district.*

Montana Code Annotated § 22-1-701(2) states that a public library district “may include incorporated municipalities within a county.” However, Montana Code Annotated § 22-1-702(8) provides:

Except as provided in 22-1-705, if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall adjust the boundaries of the district to exclude the territory served by the public library.

Thus, if a public library district was created in Lake County, and all or part of the territory served by the Polson city library was included within the boundaries of the newly-created district, the governing body of Lake County would initially be required to adjust the boundaries of the district to *exclude* from the district the territory served by the Polson city library.

Montana Code Annotated § 22-1-705 provides a method by which existing public libraries (such as the Polson city library) may be “consolidated into” a public library district. This could be accomplished by adoption of a resolution, following a public hearing, by the governing body of the city that established the library and by the library district trustees. Montana Code Annotated § 22-1-705(1). Thus, in the example you presented, the Polson city commission and the North Lake County library district trustees would hold a hearing on the question of whether the Polson city library should be included within the library district. If, after the hearing, it is determined that the Polson city library should be included in the district, then the Polson city commission and the North Lake County library district would adopt resolutions to that effect.

Since the statute providing for the method of consolidation of existing public libraries into the district calls for a hearing and a resolution by the library district trustees, under the current law this process may only occur *after* the district is created and the district trustees are appointed by governing body of the county, pursuant to Montana Code Annotated § 22-1-704.

Question 3 Does the language of Montana Code Annotated § 22-1-707(1)(b) indicate that the governing body of the county "approves" the budget?

Montana Code Annotated § 22-1-707(1)(b) requires the board of trustees of a public library district to "prepare annual budgets as required by the county governing body or bodies." Your question is whether this language could be interpreted to give ultimate budget approval authority to the county governing body, rather than to the public library district trustees. I don't believe it can or should be interpreted that way.

Montana Code Annotated § 22-1-707(1)(b) must be read together with Montana Code Annotated § 22-1-708, which provides:

Public library district budget -- property tax levy. (1) The board of trustees shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory in the public library district at the regular budget meetings as prescribed in Title 7, chapter 6, part 40, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) Subject to 15-10-420, the county governing body shall, annually at the time of levying county taxes, fix and levy a tax on all taxable property within the public library district sufficient to raise the amount certified by the board of trustees and approved by the electors. The tax levied may not in any year exceed the maximum amount approved by the electorate in 22-1-703 or 22-1-709. (Emphasis added).

It seems to me that Montana Code Annotated §§ 22-1-707 and 22-1-708 are similar to the statutory scheme established for financing of public libraries in Montana Code Annotated §§ 22-1-304 and 22-1-309. As you know, prior Attorney General opinions have upheld the authority of library boards of trustees to adopt an annual budget. With limited exceptions, county governing bodies do not have the authority to modify a budget adopted by the trustees, and may not refuse, within statutory millage limits, to levy property taxes necessary to satisfy the budget submitted by the library trustees. See 48 Op. Att'y Gen. No. 3 (1999), and 41 Op. Att'y Gen. No. 91 (1986). I believe the statutes referenced above, providing for financing of library districts, would be construed in a similar manner.

In my opinion, the language that concerns you in Montana Code Annotated § 22-1-707(1)(b) may simply be read as requiring that the district trustees must prepare and submit an annual budget pursuant to the standard procedure dictated by the

county governing body for budget submission. It does not give the county governing body any additional authority over the actual budget prepared by the trustees.

Question 4 *Does a library district board of trustees have the authority to hold title to buildings and facilities purchased or leased for library district purposes?*

Montana Code Annotated § 22-1-707(2) states that a library district board of trustees “has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations.” In the exercise of “this general grant of powers,” the board has the authority to “lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district . . .” Montana Code Annotated § 22-1-707(2)(c)(i). There is no language in the current law that specifies who holds title to property, buildings, or facilities purchased or acquired by the district.

Montana Code Annotated § 22-1-309(4) gives public library boards of trustees 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 or county or both, as the case may be, for the use and purposes of the library . . .” In 42 Op. Att’y Gen. No. 98 (1988), the Attorney General held that, even though title to property is held in the name of a local governing body, the library board of trustees has ultimate authority to determine what to do with the property.

Montana Code Annotated § 22-1-707, as it is currently written, does not explicitly provide that a library district board of trustees would hold title to buildings and facilities that it purchases or otherwise acquires. If you want the Board to have that authority, you could insert language to that effect in Montana Code Annotated § 22-1-707(2)(c)(i), as follows:

“lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district, and own and hold title to such buildings and facilities, . . .”

Of course, if the library district holds title to buildings and facilities, it will be required to insure the property. And, the district could be named in a lawsuit arising from any injuries sustained by persons on the property.

Alternatively, if you want the city or county governing body to hold title to the property, you can insert language similar to that set out in Montana Code Annotated § 22-1-309, as

long as it remains clear that the district board of trustees has ultimate authority to determine how the property is used, and the disposition of the property, despite title being held in the name of the local governing body.

Question 5 *Can a public library district board establish a depreciation reserve fund?*

I have found no explicit authority in existing law that would authorize establishment of a library district depreciation reserve fund. Given the policy of strict accountability of public funds, it would be preferable to amend the law to expressly provide a district with that authority. You could use language in Montana Code Annotated §§ 22-1-305 through 22-1-307 as a guide.

Darlene's question is whether the existing statutes could be amended to change the process for creation of a public library district from a two-step process to a one-step process. As a practical matter, given the requirements for public notice and public participation in the process of governmental decision-making, I'm not sure the current process can be reduced to a one-step process. If you have a specific proposal for changing the procedure, I would be happy to review it and discuss it with you.

jms



Close

From: Staffeldt, Darlene
To: Strege, Karen; Cooper, Bob
Cc:
Subject: RE: District law revision
Sent: 6/18/2004 2:44 PM

Importance: Normal

Karen, I thought these were good except I still have troubles with section 8 and wonder about making the following additional change:

8) if all or part of the territory served by an existing public library, as defined in 22-1-326 is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall ~~adjust~~ set the boundaries of the district to ~~exclude~~ include the territory served by the public library.

basically delete the exception statement at the beginning.

Also in the state publications law revision are we taking care of the "contracts" statement that the auditors wanted us to deal with? I'm sorry I just can not remember. Thanks, Darlene

-----Original Message-----

From: Strege, Karen
Sent: Thursday, June 17, 2004 3:10 PM
To: Cooper, Bob; Staffeldt, Darlene
Subject: District law revision

FREE PUBLIC LIBRARIES

22-1-301. Definitions.

Unless otherwise provided, the following definitions apply in this part:

Attached is the first draft of revisions. I wonder if the following section in existing law doesn't answer the question about ownership? It seems clear to me that transfer of ownership can already transfer??

(ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;

<< File: Free Public Libraries.doc >>

Karen Strege
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following a public hearing, by the governing body of the city or county that established the public library and by the board of trustees of the district.

Suggested replacement:

(1) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326, is to be included within the boundaries of a contiguous expanded public library district, the territory served by the public library may be consolidated into the district upon the adoption of a resolution, following a public hearing, by the governing body of the city or county that established the public library and by the board of trustees of the district.

Cooper, Bob

From: Strege, Karen
Sent: Thursday, June 17, 2004 3:10 PM
To: Cooper, Bob; Staffeldt, Darlene
Subject: District law revision

FREE PUBLIC LIBRARIES

22-1-301. Definitions.

Unless otherwise provided, the following definitions apply in this part:

Attached is the first draft of revisions. I wonder if the following section in existing law doesn't answer the question about ownership? It seems clear to me that transfer of ownership can already transfer??

(ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;



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FREE PUBLIC LIBRARIES

22-1-301. Definitions.

Unless otherwise provided, the following definitions apply in this part:

- (1) "City" means city or town.
- (2) "Commission" means the state library commission.
- (3) "Public library" means a library created under 22-1-303 through 22-1-317 and 22-1-702 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles.
- (4) "State multilibrary card" means a card that is issued to a Montana resident by a public library created under Title 7 or under 22-1-303 and that may be used for library services in every public library in the state.

PUBLIC LIBRARY DISTRICTS

22-1-702. Creation or enlargement of public library district.

(1) Proceedings for the creation or enlargement of a public library district or the conversion of a public library to a public library district may be initiated by:

(a) a petition signed by not less than 15% of the qualified electors who reside within the proposed district or the area to be added to an existing district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a district.

(2) The petition must contain:

(a) the boundaries of the proposed public library district;

(b) a map showing the boundaries;

(c) subject to 15-10-420, the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(d) the proposed number of members on the board of trustees. The number of members must be five or seven.

(3) When the territory to be included in the proposed public library district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 15% of the qualified electors of the territory within the county proposed for inclusion in the district.

(4) Upon receipt of a petition to create a public library district, the county clerk shall examine the petition and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition must be published as provided in 7-1-2121 in each county in which territory of the proposed public library district lies.

(6) At a hearing on the proposed public library district, the county governing body shall hear testimony:

(a) of all interested persons on whether a district should be created;

(b) regarding the proposed boundary, the property tax mill levy, and the number of members of the board of trustees; and

(c) on any other matter relating to the petition.

(7) After the hearing, if the county governing body determines that the proposed public library district should be created, it shall by resolution:

(a) set the boundaries of the proposed district;

(b) set the maximum mill levy for the proposed district;

(c) set the number of members to be on the board of trustees; and

(d) call for an election on the question of whether to create the district. The election may

be:

- (i) held in conjunction with a regular or primary election; or
- (ii) conducted by mail ballot in accordance with the provisions of Title 13, chapter 19.
- (8) Except as provided in ~~22-1-705~~, if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, ~~the governing body of the county shall adjust~~ set the boundaries of the district to ~~exclude~~ include the territory served by the public library.

[Last noted date: 2001]

22-1-707. Duties and powers of board of trustees.

- (1) The board of trustees of a public library district shall:
 - (a) operate and maintain library property within the district and may conduct programs relating to libraries and make improvements to district property as the board considers appropriate;
 - (b) prepare annual budgets as required by the county governing body or bodies;
 - (c) pay necessary expenses of district staff members when on business of the district;and
 - (d) prepare and submit any records required by the Montana state library.
- (2) The board has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations. In the exercise of this general grant of powers, the board may:
 - (a) (i) employ or contract with administrative, professional, or other personnel necessary for the operation of the district; or
 - (ii) contract with other entities to provide or receive library services and to pay out or receive funds for those library services;
 - (b) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;
 - (c) (i) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district, and may own and hold title to such buildings and facilities, and equip, operate, and maintain the buildings and facilities; or
 - (ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;
 - (d) adopt by resolution, bylaws and rules for the operation and administration of the district;
 - (e) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in 22-1-708;
 - (f) with the concurrence of the county governing body or bodies, accept donations of land or facilities within the district to be used for district purposes;
 - (g) accept donations and devises of money or personal property; and
 - (h) establish a library depreciation reserve funds as authorized and described in 22-1-305 and 22-1-306.
- ~~(h)~~ (i) exercise other powers, not inconsistent with the law, necessary for the operation and management of the district.

[Last noted date: 2001]

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU
1712 NINTH AVENUE, P.O. BOX 201440, HELENA, MONTANA 59620-1440

Mike McGrath
Attorney General

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MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: KAREN STREGE
Montana State Librarian

FROM: JIM SCHEIER
Assistant Attorney General

RE: Public Library Districts

DATE: June 14, 2004

Your recent memo asks five questions regarding the laws governing public library districts. In addition, Darlene Staffeldt, in an email to me dated June 4, 2004, asked a question about the process whereby cities may be included in a county-wide library district.

***Question 1** It appears that the language of the resolution allowed in Montana Code Annotated § 22-1-702(1) is not specified. If so, should the law be amended to provide that the language of the resolution include the same information as the petition?*

There are actually two different "resolutions" referred to in Montana Code Annotated § 22-1-702. The first resolution is described in subsection (1)(b) of the statute, as a "resolution of intent." This is one of the methods that the county governing body may utilize to *begin the process* of creating a district. It is simply a resolution indicating the county governing body's intent to "[call] for the creation of a district." Montana Code Annotated § 22-1-702(1)(b).

There would then have to be a public hearing on the question. Following the hearing, if the county governing body determines that the district should be created, it adopts another resolution, which must include all the information set out in Montana Code Annotated § 22-1-702(7). As you can see, the information that is required to be included in a

resolution adopted under subsection (7) is the same information that is required to be included in a petition described in subsection (2) of the statute. Therefore, in my opinion there is no need to amend Montana Code Annotated § 22-1-702 to accomplish what you have suggested.

Question 2 Describe the process by which an existing public library would become part of a library district.

Montana Code Annotated § 22-1-701(2) states that a public library district “may include incorporated municipalities within a county.” However, Montana Code Annotated § 22-1-702(8) provides:

Except as provided in 22-1-705, if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall adjust the boundaries of the district to exclude the territory served by the public library.

Thus, if a public library district was created in Lake County, and all or part of the territory served by the Polson city library was included within the boundaries of the newly-created district, the governing body of Lake County would initially be required to adjust the boundaries of the district to *exclude* from the district the territory served by the Polson city library.

Montana Code Annotated § 22-1-705 provides a method by which existing public libraries (such as the Polson city library) may be “consolidated into” a public library district. This could be accomplished by adoption of a resolution, following a public hearing, by the governing body of the city that established the library and by the library district trustees. Montana Code Annotated § 22-1-705(1). Thus, in the example you presented, the Polson city commission and the North Lake County library district trustees would hold a hearing on the question of whether the Polson city library should be included within the library district. If, after the hearing, it is determined that the Polson city library should be included in the district, then the Polson city commission and the North Lake County library district would adopt resolutions to that effect.

Since the statute providing for the method of consolidation of existing public libraries into the district calls for a hearing and a resolution by the library district trustees, under the current law this process may only occur *after* the district is created and the district trustees are appointed by governing body of the county, pursuant to Montana Code Annotated § 22-1-704.

Handwritten notes in the right margin: "We need to get the Polson city library included in the district."

Question 3 *Does the language of Montana Code Annotated § 22-1-707(1)(b) indicate that the governing body of the county "approves" the budget?*

Montana Code Annotated § 22-1-707(1)(b) requires the board of trustees of a public library district to "prepare annual budgets as required by the county governing body or bodies." Your question is whether this language could be interpreted to give ultimate budget approval authority to the county governing body, rather than to the public library district trustees. I don't believe it can or should be interpreted that way.

Montana Code Annotated § 22-1-707(1)(b) must be read together with Montana Code Annotated § 22-1-708, which provides:

Public library district budget -- property tax levy. (1) The board of trustees shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory in the public library district at the regular budget meetings as prescribed in Title 7, chapter 6, part 40, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) Subject to 15-10-420, the county governing body shall, annually at the time of levying county taxes, fix and levy a tax on all taxable property within the public library district sufficient to raise the amount certified by the board of trustees and approved by the electors. The tax levied may not in any year exceed the maximum amount approved by the electorate in 22-1-703 or 22-1-709. (Emphasis added).

It seems to me that Montana Code Annotated §§ 22-1-707 and 22-1-708 are similar to the statutory scheme established for financing of public libraries in Montana Code Annotated §§ 22-1-304 and 22-1-309. As you know, prior Attorney General opinions have upheld the authority of library boards of trustees to adopt an annual budget. With limited exceptions, county governing bodies do not have the authority to modify a budget adopted by the trustees, and may not refuse, within statutory millage limits, to levy property taxes necessary to satisfy the budget submitted by the library trustees. See 48 Op. Att'y Gen. No. 3 (1999), and 41 Op. Att'y Gen. No. 91 (1986). I believe the statutes referenced above, providing for financing of library districts, would be construed in a similar manner.

In my opinion, the language that concerns you in Montana Code Annotated § 22-1-707(1)(b) may simply be read as requiring that the district trustees must prepare and submit an annual budget pursuant to the standard procedure dictated by the

county governing body for budget submission. It does not give the county governing body any additional authority over the actual budget prepared by the trustees.

Question 4 *Does a library district board of trustees have the authority to hold title to buildings and facilities purchased or leased for library district purposes?*

Montana Code Annotated § 22-1-707(2) states that a library district board of trustees “has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations.” In the exercise of “this general grant of powers,” the board has the authority to “lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district . . .” Montana Code Annotated § 22-1-707(2)(c)(i). There is no language in the current law that specifies who holds title to property, buildings, or facilities purchased or acquired by the district.

Montana Code Annotated § 22-1-309(4) gives public library boards of trustees 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 or county or both, as the case may be, for the use and purposes of the library . . .” In 42 Op. Att’y Gen. No. 98 (1988), the Attorney General held that, even though title to property is held in the name of a local governing body, the library board of trustees has ultimate authority to determine what to do with the property.

Montana Code Annotated § 22-1-707, as it is currently written, does not explicitly provide that a library district board of trustees would hold title to buildings and facilities that it purchases or otherwise acquires. If you want the Board to have that authority, you could insert language to that effect in Montana Code Annotated § 22-1-707(2)(c)(i), as follows:

“lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district, and own and hold title to such buildings and facilities, . . .”

Of course, if the library district holds title to buildings and facilities, it will be required to insure the property. And, the district could be named in a lawsuit arising from any injuries sustained by persons on the property.

Alternatively, if you want the city or county governing body to hold title to the property, you can insert language similar to that set out in Montana Code Annotated § 22-1-309, as

long as it remains clear that the district board of trustees has ultimate authority to determine how the property is used, and the disposition of the property, despite title being held in the name of the local governing body.

Question 5 Can a public library district board establish a depreciation reserve fund?

I have found no explicit authority in existing law that would authorize establishment of a library district depreciation reserve fund. Given the policy of strict accountability of public funds, it would be preferable to amend the law to expressly provide a district with that authority. You could use language in Montana Code Annotated §§ 22-1-305 through 22-1-307 as a guide.

NO
FUND
...
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...

Darlene's question is whether the existing statutes could be amended to change the process for creation of a public library district from a two-step process to a one-step process. As a practical matter, given the requirements for public notice and public participation in the process of governmental decision-making, I'm not sure the current process can be reduced to a one-step process. If you have a specific proposal for changing the procedure, I would be happy to review it and discuss it with you.

jms

THIS ? IS REFERRING TO A
ONE-STEP DISTRICT + CITY
PROCESS - NOT CURRENTLY
THE LOCAL GOV'T MEMBERS
PASTOR
USE PLEASE

Cooper, Bob

From: Strege, Karen
Sent: Thursday, May 27, 2004 4:13 PM
To: Staffeldt, Darlene; Cooper, Bob
Subject: Library district

Attached is a draft of questions to Jim Scheier. Please give me your comments by next Wednesday.

I did not include a question about the original establishment of the district because I think I understand that law - let me explain.

22-1-702 can be used to convert a public library to a district. That may happen according to 22-1-705, after the city or county and the board adopt a resolution, following a public hearing. These steps would happen before the steps in 22-1-702. I may not be remembering the problem so refresh my memory if I have it wrong.

I think that Darlene was also planning to dig up Scheier's previous advice on the above.

Thanks



librarydistrict.doc

Karen Strege
Montana State Librarian
406-444-3115
kstrege@state.mt.us

To: Jim Scheier
From: Karen Strege
Re: Public Library District Law
Date: May 27, 2004

As you know the legislators approved public library district law in 2001. Since that time, MSL staff members have worked with local government officials to understand and apply the provisions in the statutes. Staff members have accumulated questions about these law as follows.

During the EPP process, we submitted a placeholder for an agency bill with the Governor's office that asked for more information about the request. These questions are asked to determine if MSL should go forward with a draft.

22-1-707. Does "(C) prepare annual budgets as required by the county governing body or bodies" indicate that the governing body approves the budget. As you know, this is not what we wish. If you believe the language is unclear, would you suggest replacement language?

22-1-707 Does "(C) i. lease, purchase, or contract for the purchase of building and facilities on lands controlled by the districts" mean that the board holds the title to such building and facilities. If not, would you suggest replacement language?

Can a public library district board establish a depreciation reserve fund?



Close

From: Marilyn Trosper [SMTP:mtrosper@polson.lib.mt.us]

To: Bob Cooper

Cc:

Subject: Library District Clarifications

22-1-300C UC

Sent: 5/17/2004 4:59 PM

22-1-300C

Importance: Normal

Bob:

The comments below are mine; Rose and others haven't gotten back to me. It seems as though the new district law focuses more on the creation and dissolution rather than some of the finer details regarding operation and governance. Other than electing trustees, the Multijurisdictional district mirrors 22-1-301 through Why doesn't the new district law follow 22-1-301 more closely too? Anyway, here is the brief list I've had time to put together. I'm short staffed today

CONCILIATION

(X) library controlled by

CAN ADD HOLD TO PROGRAMS

50/

- 22-1-707 Duties and Powers of board of trustees seems restrictive compared to 22-1-309
- What decision powers do the County Commissioners have; they are going to want a lot
- Who hires and set the compensation for the Library Director & staff
- Need ability to create, retain, and invest monies for a Library Depreciation Reserve Fund
- Library Districts aren't listed under 22-1-326 for State Aid to Public Libraries (ILL Reimbursement too ?)
- Where does the bookmobile fit in

22-1-305

22-1-309

48

22-1-328

LOSS - 1 computer - Lottery Draw

I'm sure there are a few more but I promised I would get it to you today.

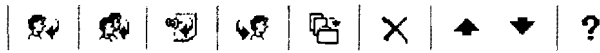
(2)

PSS

Marilyn

Marilyn Trosper, Director
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GOVT HANDLING IF GIFTS BY
7-8-103 LOCAL GOVTS
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Close

From: Marilyn Trospen [SMTP:mtrosper@polson.lib.mt.us]

To: Bob Cooper

Cc:

Subject: P.S. for Clarifications

Sent: 5/17/2004 5:03 PM

Importance: Normal

Bob:

How about all of those ancillary taxes - are they applicable to public library districts too? See, I knew I had more questions.

*No. Not for New DISTRICTS
See mill levy*

Marilyn

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*Contract on Capital & EE
School District to Handle
FINANCES*

Cooper, Bob

From: Bridenstine, Rose
Sent: Friday, October 11, 2002 4:18 PM
To: Cooper, Bob
Subject: District Library Statutes

Bob: I promised to send you some comments regarding ambiguities or confusing language in these statutes. These are some of the problems we discovered:

1. MCA 22-1-702 Creation or enlargement of public library district.
22-1-702(1)(a) & (b) call for a petition or a resolution of intent adopted by the county governing body. Sections (2), (3), (4), and (5) of the statute contains language referring to a "petition". Section (6) lays out what will happen at the public hearing conducted by the governing body of the county, but includes (c) which says "on any other matter relating to the petition". This language seems to say that a petition is mandatory. Perhaps it should read ". . .to the petition, if one has been signed and filed" or some other language which makes clear that the petition is an alternative not a requirement.
2. We did not find any specific language for district libraries regarding any reserve funds which might exist. We discussed this one already. You thought that statutes already in existence regarding reserve funds for public libraries could rule, but this could be challenged (and in this economic climate, probably would be challenged) by the counties. If we could get specific language regarding fund reserves for district libraries that might be helpful.

We have not yet had occasion to test the other district library statutes. Let's hope we do!

It's been a long week and I can't think of anything else right now. If I come up with something else this weekend, I'll e-mail you.

Rose Bridenstine
Lake Co. LIP Board