

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU
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MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: KAREN STREGE
Montana State Librarian

DARLENE STAFFELDT
Statewide Library Resources

FROM: JIM SCHEIER
Assistant Attorney General

RE: Library in Lake County

DATE: August 5, 2002

Lake County wants to establish a county library system. Currently there are three legally established city libraries. The county imposes a levy for library services on the property owners in the county, which is used to pay the city libraries for library services provided to county residents.

In your recent memo you ask what legal procedures are available to Lake County to establish a county library and to incorporate the existing city libraries into the new county library, preferably in one process.

I agree with your suggestion that this can be accomplished through the procedures outlined in the statutes that provide for establishment of public library districts. It may, however, require two separate but interrelated processes.

Montana Code Annotated § 22-1-701(2) states that a public library district "may contain the entire territory of a county, [and] the territory of part of a county . . ." In addition, a district "may include incorporated municipalities within a county." Proceedings to create a public library district may be initiated by 1) a petition signed by not less than 15% of the

qualified electors who reside within the proposed district, or 2) a resolution of intent adopted by the county governing body, calling for the creation of a district. Montana Code Annotated § 22-1-702(1)(a) & (b). If the county governing body chooses method (2), the adoption of a resolution, that would only constitute a resolution indicating the “intent” to “[call] for the creation of a district.” It appears that there would still have to be a public hearing as set forth in Montana Code Annotated § 22-1-702(6). Following the public hearing the county governing body establishes the boundaries and administrative details relating to the proposed district, and the question is submitted to the voters. Montana Code Annotated §§ 22-1-702 through 22-1-704.

Montana Code Annotated § 22-1-705 provides a method by which existing public libraries may be “consolidated into” a public library district. This is accomplished by adoption of a resolution, following a public hearing, by the governing body of the city that established the library *and by the board of trustees of the district*. Montana Code Annotated § 22-1-705(1)(a). Since the board of trustees of a public library district is not appointed until after the district is created (see Montana Code Annotated § 22-1-704), it appears that this consolidation procedure would have to occur *after* the library district has been created pursuant to the procedure outlined in Montana Code Annotated §§ 22-1-702 to 22-1-704. Thus, from my reading of the statutes it does not appear that the district can be established and the city libraries incorporated into the district in “one process” consisting of one petition, resolution, and election. Rather, I believe that the district must first be formed and the trustees appointed, and then the existing city libraries would be consolidated into the district pursuant to Montana Code Annotated § 22-1-705. This would entail another set of resolutions and public hearings.

The fourth paragraph in your memo suggests that city governments who do not wish to have their cities included within the district would not participate in the election. That would be true if the wishes of those particular cities are made known at the public hearing contemplated by Montana Code Annotated § 22-1-702. That would be the time for cities that do not wish to be within the boundaries of the proposed district to convey that information to the county governing body, which is responsible for establishing the boundaries of the proposed district.

Finally, before any steps are taken to attempt to create the district I would suggest that the Lake County Attorney and the city attorneys for the three cities where the existing public libraries are located should confer with one another and agree on the feasibility and legality of the procedure used to accomplish this task.

Give me a call if you wish to discuss or if you have additional questions.

jms

Cooper, Bob

From: Strege, Karen
Sent: Wednesday, July 10, 2002 12:53 PM
To: Staffeldt, Darlene; Cooper, Bob
Subject: RE: LIP District Concerns

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

From: Staffeldt, Darlene
Sent: Wednesday, July 10, 2002 11:56 AM
To: Cooper, Bob; Strege, Karen
Subject: RE: LIP District Concerns

My thoughts which may or may not help, as Karen forms her response:

1. on tribal issue, I think at this point we really need to wait and hear from Jim S. We know that they were included in the past, I would think there will be a way to include them in the district proposal. I AGREE.

2. I would think the 22-1-707 (h) would allow for the use of the library depreciation reserve fund 22-1-305 even if it is not specifically stated in the district laws. I AGREE BUT WE NEED TO ASK JIM S

3. I would think that library district employees are district employees. They could be paid via the county or city if the library district was able to contract with the county or city to provide the payroll and/or accounting support. I AGREE.

4. I would hope that they would be far enough into the petition process by September 30th that there would be no possibility that it would not be completed at some point in 2002, which I think would still meet the overall intent of the grant. No federal monies can be spent on the petition or ballot processes so the monies should all be expended or incumbered to be expended by December 2002. I AGREE.

Just some random thoughts. Thanks, Darlene

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

From: Cooper, Bob
Sent: Tuesday, July 09, 2002 4:19 PM
To: Strege, Karen
Cc: Staffeldt, Darlene
Subject: LIP District Concerns

Karen:

I have had discussions with Marilyn Trosper and Rose Bridenstine earlier today in regard to the LIP meeting tomorrow night. I have come away with four concerns I feel need to be addressed to some extent on our end:

One from earlier is the role the Tribe will play in the district formation. Jim S. said he would look into this when he got the chance after moving. After all, most of Lake County is reservation land.

Does 22-1-305 MCA "Library depreciation reserve fund authorized" apply to a library district? The district law language does not mention the carryover of funds and 22-1-305 does not mention districts.

The budget will have to be adjusted upward to cover district legal, payroll, and accounting support. Are library district employees to be considered county employees? Are there other viable options here?

The change to a district emphasis has the LIP group reeling just a bit, although they do realize that it might end up being a more effective direction to take. The LIP leadership appears to no longer feel that a successful petition effort can be run this summer, especially to gather the necessary signatures countywide (15%) required to establish a

district. The group seems to be leaning toward having a go at the Spring 2003 election or a Spring 2003 mail-out ballot instead of the November 2002 general election. Since the petition effort is part of the LSTA contract, what happens if the petition is not run by the project termination date of September 30, 2002?

Bob