

From: [Cook, Tracy](#)
To: ["Connie Behe"](#)
Cc: [Stapp, Jennie](#)
Subject: RE: Property transfer
Date: Monday, December 10, 2018 9:27:00 AM

Hi Connie,

I have to give my standard disclaimer that I am not a lawyer, and this shouldn't be construed as legal advice. It is often helpful to have an attorney review these kinds of questions. Having said that, here are my thoughts on the situation.

1. Why does the donor want the Foundation to have an MOU with the county? What are her concerns? I don't believe the Foundation needs to have an MOU with the county. Having read the MOU you attached to the email, the Foundation clearly intends to transfer the property to the library which is a recognized department within the county. The donor is clearly concerned about something. Is it whether or not the Foundation will follow through on the deal? Is it concerns about tax deductions, etc.? Is it something else? It would be good to know what the concerns are, because there might be other ways to address them.
2. As you have noted, MCA 22-1-309 (4) and (8) give the Board the authority to accept this donation as well as the authority to hold real and personal property in the name of the city or county. I researched our work with previous questions like this. The property issue is tricky. It would probably be wise to have an MOU with the county – spelling out who owns the property, who manages it, who insures it, and who maintains it. The property will need to be in the name of the county, but the law and Attorney General Opinion (42 Op. Att'y Gen. No. 98) indicate the board has authority over management and insurance of the property. An MOU with the county could clarify this and provide protection for the library (and county).
3. I believe the county will need to sign the paperwork, because this is about ownership. The board clearly has the power to contract, and if this were a lease the board could sign the paperwork. Because it will eventually result in property ownership, I believe the county will need to sign the paperwork or give the board authority to sign on the county's behalf. At some point – if ownership is involved, it must be done in the name of the county. This leads to your last question – is the library board allowed to accept the gift of the new facility without Commissioner approval? The law seems to indicate yes, but as a matter of practicality it seems like you would need Commission buy-in in order to have the correct paperwork in place.

Does this help? I added Jennie to this email in case she had additional insight.

-Take care,
Tracy

From: Connie Behe <cbehe@imagineiflibraries.org>
Sent: Friday, December 7, 2018 9:25 AM
To: Cook, Tracy <TCook2@mt.gov>
Subject: Property transfer

Hi Tracy,

The Library Foundation is very close to closing on the property in Bigfork. The Library has a MOU with the Foundation (attached) for transfer of the property to the Library after it is renovated.

A major donor prospect has said she will only donate after the Foundation has an MOU with the County.

Do we need an additional MOU with the County? Is the Library Board allowed to accept the gift of the new facility without Commissioner approval?

Thank you,
Connie

22-1-309. Trustees -- powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

(2) establish and locate a central public library and may establish branches thereof at such places as are deemed necessary;

(3) have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts;

(4) have 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 and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the library and to insure the real and personal property of the library;

(5) pay necessary expenses of members of the library staff when on business of the library;

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana state library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) exercise such other powers, not inconsistent with law, necessary for the effective use

and management of the library.

History: Ap. p. Sec. 5, Ch. 260, L. 1967; Sec. 44-222, R.C.M. 1947; Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; R.C.M. 1947, 11-1006(part), 44-222.

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