

**STATE OF MONTANA**  
**DEPARTMENT OF JUSTICE**  
**AGENCY LEGAL SERVICES BUREAU**

**Tim Fox**  
Attorney General



1712 Ninth Avenue  
P.O. Box 201440  
Helena, MT 59620-1440

**MEMORANDUM**

**CONFIDENTIAL**  
**ATTORNEY-CLIENT PRIVILEGED**  
**ATTORNEY WORK PRODUCT**

**TO:** Jennie Stapp – Montana State Librarian  
Tracy Cook

**FROM:** Jeffrey Doud  
Assistant Attorney General

**RE:** Legal Analysis on Library District Bonds

**DATE:** November 25, 2020

**MEMORANDUM**

You have asked for my opinion as to whether an independent library district, established under Mont. Code Ann. § 22-1-701, et seq., has the ability to seek a bond to build a new building.

**APPLICABLE STATUTES AND RULES**

The statutes governing independent library districts are set forth in Mont. Code Ann. §22-1-701, et seq. As you noted, there is no provision within this part of the Montana Code which allows an independent library district to seek a bond for purposes of building a library facility. However, there is a provision within Mont. Code Ann. § 22-1-304, which is the part of the code that pertains to free public libraries, that sets forth the process for seeking a bond. The question becomes whether this provision is applicable to independent library districts.

## OPINION

I am of the opinion that an independent library board does not have the authority to, unilaterally, seek a bond to construct a library facility for the district.

Mont. Code Ann. § 22-1-304(5), which is the only provision within the library statutes that discusses bonds, states that “[b]onds may be issued by the governing body in the manner prescribed by law for the following purposes: a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library; b) buying a bookmobile or bookmobiles; and c) funding a judgment against the library.” You will note that the language of this provision only authorizes “governing bodies” to issue bonds for limited purposes.

While the library district’s intent to construct or purchase a facility to house the library meets the criteria for issuance of a bond, I do not believe that a library district falls within the definition of “governing body,” and, therefore, lacks the legal authority to issue a bond. While the term “governing body” is not defined anywhere in the code, my opinion is based upon the usage of that term in prior subsections of the same statute. In Mont. Code Ann. § 22-1-304(1), the term is used in the following manner: “governing body of a city or county that has established a public library.” As you can see, the legislature defined the term more narrowly to include only those bodies that govern cities and towns that have established libraries. As such, when interpreting the phrase “governing body,” I believe a court would look to how the term is used in other areas of the code to arrive upon its definition. Seeing that the term “governing body” included those bodies that govern cities and counties in a prior subsection, I believe that a court would apply a similar definition even though the “of a city or county that has established a public library” is not included. The court would ascertain that the legislature used the shorthand “governing body” in lieu of the full phrased as used in a prior subsection.

Additionally, there is no language in the provision which establishes that the legislature declared an intent to distinguish between governing bodies, generally, and governing bodies of city and counties in this section. Therefore, I do not believe that a library district falls within the definition of a governing body.

Moreover, I believe my opinion is supported by an AG’s opinion which holds that “the local governing body, not the library board, determines the number of mills to levy in support of the library.” While this opinion concerns mills and not bonds, and does not speak to whether a library district constitutes a governing body, it does provide an

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opinion that a governing body, and not a library board, is solely responsible for the manner in which the library is funded. I believe that same opinion would hold true in this context.

Based on the foregoing, I do not believe that a library district has the legal authority to issue bonds, and that authority is reserved solely for the governing body of the city and/or county within which the library resides.

Please let me know if I can be of any further assistance.

jmd/lmj