

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU

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MEMORANDUM

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TO: Jennie Stapp – Montana State Librarian

FROM: Jeffrey Doud 
Assistant Attorney General

RE: Enforcement of Public Library Essential Standards Requirements.

DATE: March 20, 2018

MEMORANDUM

You have asked for my opinion as to whether the Montana State Library (MSL) was required to enforce, and public libraries across the state are required to comply with, the “essential standards” requirements imposed under the Administrative Rules of Montana in light of the legislature’s suspension of its payments to these libraries. This memorandum sets forth my opinions regarding MSL’s enforcement requirements given my review and analysis of the laws and rules currently in effect.

APPLICABLE STATUTES AND RULES

The applicable rules requiring regional and municipal libraries to meet certain standards and provide specific information to the MSL are set forth in Admin. R. Mont. 10.102.1150A through 10.102.1152. Of particular note, Admin. R. Mont. 10.102.1150A provides that “[p]ublic libraries receiving state payments must meet the following essential standards by July 2007 and each year follow.” Admin. R. Mont. 10.102.1150A(1). This language is important because it would seem to premise a public library’s compliance with the “essential standards,” set forth in the rules, on the receipt of state payments. The remaining rules, set forth within Admin. R. Mont. 10.102.1150B-M, itemize the requirements that the public libraries must comply with on a periodic basis.

Jennie Stapp
Montana State Library
March 20, 2018
Page 2

It is important to note that the term “state payments” is not define. Though the primary source of payments to public libraries comes from Mont. Code Ann. § 22-1-326 and § 22-1-327, as we have discussed, there are other sources of state funds that flow through to the libraries. Following the 2017 special session, the legislature voided the funding that is set forth in Mont. Code Ann. § 22-1-327 for FY 2018 and FY 2019.

OPINION

Based upon the legislature’s suspension of the payments obligated by Mont. Code Ann. § 22-1-327, I am of the opinion that the public libraries, who do not receive any state funds, are not under an obligation to meet the essential standards and reporting requirements set forth in the ARM for FY 2018 and FY 2019. And, as a result, I do not believe that the MSL has an obligation to enforce these rules against those libraries. The precondition of “public libraries receiving state payments” has not been met after the legislature voided the funding statute. Since the precondition in the ARM has not been met, it renders the public libraries’ requirement to comply with the terms included therein null and void.

However, since the term “state payments’ is undefined, I believe that it would be construed broadly to as to encompass any revenue source from the State. As such, any library that received any amount of funding from the State is still under an obligation to comply with the “essential standards” set forth in the ARM, and, thus, the MSL has a duty to enforce those requirements. Failure to enforce or certify that the public libraries have met these essential standards could result in the MSL being admonished in a regulatory audit.

Having said that, Admin. R. Mont. 10.102.1152 provides for a deferral if the public library can show that compliance with the standards would cause a hardship. Certainly, if the current lack of funding has caused public libraries to cut staff and programs, and compliance with the essential standards would further constrain the public libraries’ resources, then the public libraries may meet the hardship standard.

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

jmd/clr