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Carbon County Commissioners
County Administration Building
Red Lodge, MT 59068

RE: (1) Review of Carbon County Library Board;
(2) Joliet Area Library Services

Gentlemen:

You have requested a review of the status of the Carbon County Library Board, the relationship of the Library Board with the free public libraries within the County, and the status of Library Services in the Joliet Area. The report follows:

1. A Carbon County Free Library Has Been Established.

M.C.A. § 22-1-303 provides that public libraries can be created by (1) resolution of the local government body; (2) petition of 10% or more of the resident taxpayers within the city or county governing body that is being petitioned; or by (3) governing body action following a general-election majority vote of electors for creation of a public library which vote was occasioned by the filing of a petition for such creation by no less than 5% of the resident taxpayers.

On November 7, 1972, a majority of Carbon County voters voted affirmatively in favor of the creation of a county free library.

There is some question as to whether the County Commissioners followed up on the creation of the Library requested by the voters, for there is no evidence available in the County records and files that the Commission, "pass[ed] and enter[ed] upon its minutes a resolution to the effect that a free public library is established." M.C.A. § 22-1-303(1) requires such action, as subsection (e) of that code provision provides:

If at the election a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain the library or to contract with any city or county for library service to be rendered to the inhabitants of the city or county.

However, it appears that in March of 1973, the Carbon County Commissioners appointed members to "the County Library Board," and that the Commissioners have on occasion levied the special library fund

tax that is allowed for the maintenance of adequate public library service by, "the governing body of a . . . county that has established a public library." M.C.A. § 22-1-304.

Accordingly, it is my opinion that the intent of the Carbon County Commissioners was to create a public library for the residents of Carbon County following the majority vote for such action in the 1972 general election. Such intent should be officially recognized and confirmed by Commissioner resolution.

2. County Library Board of Trustees --- Its Role In The Absence Of A Physical County Library Structure

M.C.A. §22-1-308 provides that the Board of Trustees of a County Library shall be five in number, appointed by the Chairman of the County Commissioners, and only one County Commissioner can serve on the Board at any one time. The trustees serve without compensation, but can be reimbursed for actual and necessary expenses. The trustees served for 5 year, staggered terms, and each retiring trustee is to be replaced by appointment by the Chairman of the County Commissioners on or before July 1st of each year. The Board shall meet and elect its chairman and other officers in July of each year.

The statutory powers of the County Library Board of Trustees are set forth in M.C.A. §22-1-309:

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.

The highlighted portion of the above-quoted statute has been emphasized because Carbon County does not have a physical library building from which library services are provided to the citizens of Carbon County. The highlighted language makes it clear that a County Library Board can rely upon contract services as opposed to building or leasing a physical library.

It is my understanding that Carbon County has from time-to-time contracted with other public agencies via Interlocal Agreements (Title 7, Chapter 11, Part 1, Montana Code Annotated) for the provision of library services to County residents in lieu of establishing a county library physical plant. Specifically, since the late 1980's - early 1990's the County has entered a series of Interlocal agreements directly with the Bridger Public Library, the Red Lodge Public Library, and Joliet School District No. 7 for the providing of library services to County residents.

However, the present system seemingly presupposes that the County does not have a county free library board (M.C.A. § 22-1-315 -- contracting for library services in lieu of forming a free public library), for such contracts virtually ignore the role of the County Library Board. Direct contracting by the County with presently-existing public libraries or other governmental entities that have library facilities does not keep the County Library Board within the loop for the furnishing of present library services, and does not allow the Board to effectively function and keep the Commissioners abreast of matters affecting library usage on a county-wide basis.

At present, the Library Board reviews the budget requests of the individual libraries and sets the county library budget for support purposes. However, it does so in a vacuum, as it does not set the contract standards that the individual libraries must meet in providing library services to county residents.

It is my opinion that as a Free County Library has been created, and a County Library Board appointed, that the County Commissioners should no longer directly enter into Interlocal Agreements with other governmental units for the furnishing of library services.

3. The Provision of County Library Services in the Joliet Area:

In 1992, Carbon County entered into an Interlocal Agreement with Joliet School District No. 7 for the provision of library services to County residents. The Agreement is the most-recent Agreement involving the Joliet area. A copy of the Agreement is attached as Exhibit "A". The Agreement was unique in that it created an independent Board of Trustees to operate the School - Public Library. The Agreement was terminated this spring, reportedly because there was inadequate space available in the Joliet High School Library to house both a school library and a community library.

Accordingly, at present there is no public library serving the City of Joliet. Thus, there is no free public library that is capable of contracting with either the County or the County Library Board for the furnishing of library services in the Joliet area.

The termination of the Interlocal Agreement raises serious administrative issues: First, members of the Joliet Library Board, as created under the now-terminated Agreement, have stated that they removed the books, computer equipment, and other items from the School Library that had been purchased with funds provided by Carbon County. Second, apparently that Board has also retained and continued to manage a bank account or accounts that have county funds on deposit therein. No inventory and accounting concerning these properties and monies has been furnished to the County Library Board. As the Agreement is no longer in force and effect, such properties and monies must be accounted for and turned over to the County Library Board.

Several suggestions have been advanced as providing a replacement for the 1992 Agreement for the provision of library services to County residents in and near Joliet. The suggestions and my comments concerning the same, are as follows:

A. A free public library can be created by the Joliet City Council.

The Joliet City Council can, by statute (M.C.A. § 22-1-303(1)) create a municipal free public library by adopting a resolution substantially as follows:

Whereas, the citizens of Joliet have enjoyed public library services for the past decade pursuant to a series of Interlocal Agreements between Joliet School District No. 7 and Carbon County, Montana; and

Whereas, such Interlocal Agreements will no longer be available to provide public library services for the citizens of Joliet, and the creation of a free public library for the city of Joliet is necessary to insure the continuation of library of library services;

Be It Therefore Resolved, that pursuant to M.C.A. § 22-1-303 (1), a free public library to be known as the Joliet Public Library is hereby established under the provision of Montana laws relating to public libraries.

The County Library Board could then contract with the created city library to provide services to county residents outside the City of Joliet, in the same manner as it will contract with the city libraries in Red Lodge and Bridger.

Comments:

From the standpoint of the County Library Board, such an arrangement would allow the Board to treat all free public libraries in similar fashion in the development of services for county residents, and also would result in the ability to develop comparable figures for county- resident library usage by requiring each library to furnish figures each year showing the amount of usage by non-city residents.

It has been stated that the use of the Joliet Community Building as a home for the Library may require the City of Joliet to enter into, or stand-behind a long-term lease agreement, and thereby further financially strap the City. This issue could be dealt with in lease negotiations, with the Lessor agreeing not to hold either the City of Joliet, or the County Library Board liable for unpaid lease amounts. That is, the lease would essentially be for a month-to-month term. If the lessee is unwilling to enter a short-term lease, then the City could insist that the individual library supporters either co-sign the lease, guarantee the lease, or provide cash contributions in an amount sufficient to create a pre-paid lease before passing the Resolution.

The Mayor, who appoints the trustees for the library with the advice and consent of the city council, likely could discuss with potential appointees the undesirability of the library undertaking long-term financial obligations without pre-approval of the City.

If created, and a contract is entered with the County Library Board, it is anticipated that the contract would provide that the public library could utilize the books, computers, and supplies belonging to the County that were housed within the previous school district - community library. This would allow the new Library to forgo acquisitions until such time as it can financially afford the same via contributions and/or voter-approved tax levies under M.C.A. § 22-1-315.

The matter of a public library hiring and compensating a Librarian is a matter for consideration by the Board of Trustees of the Library. M.C.A. § 22-1-310. Again, City Council concerns as to unpaid wage claims can be the subject of discussions with potential trustees, and the initial Board of Trustees may wish to conduct an essentially volunteer operation until such time as adequate funding can be sourced by tax levy or contributions, in addition to use of a portion of such monies as may be agreed upon in contracting with the County Library Board.

B. The County Library Board Can Contract with the Joliet School District No. 7 for Library Services to County Residents

It has been suggested that the School District Board of Trustees may be willing to enter into a contract with the County Library Board whereby the Board would arrange for a lease of space in the new Joliet Community Center for a Community Library, and furnish administrative support (staff and accounting functions) for the provision of library services to county residents.

Comments:

Assuming that the Commission will determine to have all library services contracting be conducted by the County Library Board, it should be recognized in considering of this proposal that the County Board - School District Agreement likely would not be an Interlocal agreement such as was entered into in the past. The new agreement will not provide for the creation of a board of trustees to run the library, but rather will simply provide that the School District will, for an agreed-upon sum of money, provide library services to county residents. The District will have full control over the hiring of staff for such library, and the implementation of the contract. If the District should determine that it wishes an advisory board to oversee the Community Library, it could appoint the same, subject to its supervision and control. The District would be the responsible contracting party, and terms of the Agreement would govern the relationship of the District to the County Library Board.

C. The County Library Board Can Lease Space In the Joliet Community Building For the County Library Physical Plant, and Provide Library Services To County Residents From That Location

It has also been suggested that as there is no physical "Carbon County Library" building, the same could be either constructed or leased in the Joliet area, and a librarian for the same hired by the County Library Board. The suggestion also specifically referenced the Joliet Community Center as a location for the County library.

Comments:

The County Library Board of Trustees has, *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.*


M.C.A. § 22-1-309. These matters are within the discretion of the County Library Board, subject to such budgetary restraints as have been imposed by the Legislature.

To date the County has, as noted above, chosen to function without utilizing owned or leased physical library facilities. It has determined to contract with presently existing public libraries, and governmental units with library facilities for the furnishing of library services to county residents. It is assumed that if the County Library Board were to now determine to revise its policy and seek to operate out of a central facility; that the quality of services may diminish due to distance factors, and that support for local libraries would necessarily be reduced without a county-wide mill levy to support the staffing and provisioning of such central facility.

RECOMMENDATIONS:

1. That the County Commission pass and enter upon its minutes a resolution (1) recognizing that it was the intent of the Commission following the 1972 general election to create a Carbon County Public Library in accordance with the wishes of the County electors; (2) creating a Carbon County Public Library effective November 8, 1972; and, (3) ratifying and confirming all actions of the Commission since that date concerning the furnishing of library services and facilities to the residents of Carbon County, Montana. A form of resolution is attached as Exhibit "B" for your consideration.
2. That rather than continuing to utilize the County - Governmental Unit Interlocal Agreement concept, the County Commissioners allow the County Library Board to contract directly with the existing Free Public Libraries ("local libraries") within the County for the providing of library services to County Residents that are not within the jurisdictional limits of the city / town that is serviced by the local library. The County Library Board can lawfully develop a contract format tailored for individual library situations, with provisions that will require the local library to submit their budget in support of a requested contract amount with such supporting data as will allow the Board to determine the level of county usage of each of the participating public libraries. A sample agreement is attached as Exhibit "C".
3. That the County Library Board be directed to contact the Board of Directors of the Joliet School-Public Library, cause an inventory and accounting for County library properties and funds to be conducted without delay, and take possession and control of such property and funds.
4. That the County Library Board be allowed to explore the furnishing of library facilities for county residents in the vicinity of Joliet; and if it is determined to continue furnishing such facilities, how the same should be accomplished. The County Board has a number of options to consider as to how facilities could be provided, as set forth above. The manner of providing facilities is matter for the County Library Board alone to decide in determining effective use and management of the County Library monies. M.C.A. § 22-1-309.

Sincerely yours,



Kemp J. Wilson

cc.
Chairperson, Carbon County Library Board
Former Chairperson, Joliet Joint School-Public Library
Chairperson, Joliet School District No. 7
Joliet City Attorney