

# Memo

**To:** Montana State Library Commission

**From:** Jennie Stapp, State Librarian

**Date:** September 26, 2012

**Re:** Attorney General Opinion 54, No. 7

After much reflection, I recommend that the State Library Commission formally express concern over the possible impact of AG Opinion 54, No. 7 on local libraries budgets and the potential to impact Montana citizens' access to information. A formal statement from the Commission could then be used to support future legislative and/or legal action taken by the library community.

From a purely philosophical perspective, I stand with other Montana librarians, understanding that access to information should remain free and unthreatened by the whims of political and fiscal policies, especially those that would reduce or eliminate funding for libraries. As we know, free and open access to information is the hallmark of a democratic society and the State Library Commission should make a strong statement to this end.

Historically, Montana library and local funding laws aligned with this perspective but this changed with the adoption of Senate Bill 138 in 2001. Based on a review of the testimony given at the time the bill was heard, it appears as though it passed without the knowledge of the State Library or the Montana Library Association. During that session the State Library actively monitored House Bill 124, commonly referred to as the "Big Bill." As explained in the accompanying memo from Jim Scheier, the State Library's effort ensured that, as contained in HB 124, statues 7-6-2348 and 7-6-4259 which exempted library budgets from local governing body approval remained unaltered. However, SB 138 repealed these statues altogether, and introduced what is now statute 7-6-4035, which requires board budgets to be approved by governing bodies. It is this change that is clarified in AG Opinion 54, No. 7.

While I am frustrated that this is the legal reality that libraries face, my recommendation regarding how to respond is tempered by political and statutory realities.

In all the State Library does, we must take a statewide perspective. Based on the wide variety of library funding models and relationships at the local level, it is very difficult to say with any certainty how legal or legislative action would impact libraries across the state. Over the course of the last several months, I have heard numerous times that this is a local issue. Montanans strongly support their local governments and tend to oppose interference from the state. As I consider the role of the Commission and the State Library I do not believe it is our role to interfere in local political and/or funding issues.

Looking forward to the upcoming 2013 Legislative Session, we believe we would face an uphill battle to change the legislation referred to in this opinion. It is highly likely that the Legislature will remain Republican controlled meaning that the majority of legislators will support legislation that benefits local government control. We have been told by Harold Blattie, Executive Director for the Montana Association of Counties (MACo), that they would oppose any legislation that “gifted levy control” to library boards. We lack consensus from Montana libraries on whether or not to seek legislative change. Though many libraries feel that this is a high priority, many others have asked us to “let sleeping dogs lie.” Without 100% backing from libraries, it would be nearly impossible to overcome the kind of opposition that is sure to come from a Republican Legislature and MACo. Equally concerning is the thought that appearing fractured on this matter may jeopardize the library community's reputation for unanimity and the strength that comes with it. This unanimity may well be required on other issues including the opportunity for increased funding for libraries.

Finally, I look to Montana Code for guidance. It states that, in part, the role of the Commission as defined in statute is to “give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns, or regions in the state that propose to establish libraries, as to the best means of establishing and improving those libraries” (MCA 22-1-103 (1)). Based on strict interpretation of this statute, the Commission does not seem to have the authority to seek legislative change that would significantly impact the operation of local governments. Rather, it seems that it is the role of the State Library to advise local governments and libraries on how best to provide library services. During the recent webinar on the AG opinion, I was very pleased to hear the number of existing or planned interlocal agreements. Creating these types of agreements at the local level, with local support, is the surest protection against funding threats. It is my recommendation that MSL staff continue to work with local librarians and local governments to help create more of these agreements. We have been told that MACo would help to support us in this effort. I believe it is in our best interest to maintain these types of partnerships, to not be seen as interfering on local government issues but to encourage strong local community relationships and to preserve the reputation of the Montana library community as a well-respected, prudent, community that speaks with one voice on issues that benefit all Montana libraries.