

APPENDIX 1

Powers of Library Boards of Trustees

Attorney General's Opinions over the Years

Free public libraries in Montana are governed by a board of library trustees. Library trustees have a broad range of powers and duties. They are given, by statute, exclusive control of the expenditure of the public library fund, the construction or lease of library buildings, and the operation and care of the library. Mont. Code Ann. § 22-1-309. The board of trustees also has the duty to appoint and set the compensation of the chief librarian and, with the recommendation of the chief librarian, to "employ and discharge such other persons as may be necessary . . . , fix and pay their salaries and compensation, and prescribe their duties." Mont. Code Ann. § 22-1-310. The board of trustees prepares the library's annual budget and submits it to the local governing body. Mont. Code Ann. § 22-1-309(6). The board also has other specific powers and duties as described in the statute, and shall "exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library." Mont. Code Ann. § 22-1-309(9).

Occasionally disputes arise between the local governing body and the board of trustees regarding the ultimate authority of each entity with respect to operation of and funding for the library. Beginning in 1986 the Attorney General has issued a number of opinions recognizing the broad statutory powers and duties vested in the board of library trustees, and the "substantial autonomy" given to the board in governing and operating the library. As we will see, however, the "autonomous" nature of the board's authority has been tempered somewhat.

Opinions Issued Prior to the 2001 Legislative Changes

41 Op. Att'y Gen. No. 91 (1986)

The Jefferson County Attorney asked the Attorney General 1) whether the Jefferson Board of County Commissioners could override the library board's decision to grant pay increases to library staff, 2) whether the county commissioners could modify the annual budget submitted by the board of trustees, and 3) whether the county commissioners had the discretion to levy no millage for funding of the library. After referring to the various statutory powers and duties of the board of library trustees, the Attorney General observed:

This brief description of the library trustees' powers and duties reflects substantial autonomy from the governing body of the local governmental unit within which the library has been established. . . . The trustees are thus quite clearly granted direct responsibility for administering the library in a manner largely independent of city or county control. That the fiscal operation of the library is heavily interrelated with that of the local government does not, at least insofar as the trustees have been accorded explicit authority, mean that their determinations are subject to plenary review and possible modification by, in this instance, a board of county commissioners.

The Attorney General responded negatively to each question, concluding that the county commissioners had no authority to 1) modify the trustees' decision concerning wage and salary amounts for library staff, 2) modify the annual budget adopted by the trustees, or 3) within statutory millage limits, refuse to levy the property taxes necessary to satisfy the annual budget adopted by the trustees.

42 Op. Att’y Gen. No. 98 (1988)

Two years later the Great Falls City Attorney asked the Attorney General whether the city commission had the authority to overrule a decision of the library board not to sell or lease a parking lot held in the name of the City of Great Falls but purchased to serve the library’s needs.

Some 23 years earlier the library board had asked the city to issue general obligation bonds to finance construction of a new library. The bonds were issued in the name of the city and the new library was constructed. Some of the bond money was used to purchase a parking lot for the library. While title to the lot was conveyed to the city, the library board had for 23 years leased out parking spaces in the lot to the public and received the income from those leases.

A developer of land adjacent to the library offered to purchase or lease the lot in order to meet the parking requirements of the city’s urban renewal plan. Following two public hearings the library board declined to sell or lease the lot to the developer. The city wanted to know whether it could modify the board’s decision.

The Attorney General cited Mont. Code Ann. § 22-1-309(4), which gives library boards the express power to sell, exchange, or otherwise dispose of real or personal property in the name of the city for the use and purposes of the library. Finding there was no similar authority granted to the city, the Attorney General determined that the city was not entitled to transfer an interest in the parking lot without the approval and request of the library board. The Attorney General also referred to his previous opinion in 41 Op. Att’y Gen. No. 91 (1986), and reaffirmed the reasoning in that prior opinion:

Insofar as the library trustees have been given explicit authority under the Library Systems Act, their determinations may not be subjected to plenary review and possible modification by the city commission. I conclude that the city commission may not overrule the decision by the library board of trustees not to sell or lease the library’s parking lot.

48 Op. Att’y Gen. No. 3 (1999)

The Big Horn County Attorney asked the Attorney General two questions: Where a county library is funded by a general fund levy under Mont. Code Ann. § 7-6-2501, does the board of county commissioners have the authority to 1) modify the annual budget submitted by the library board, or 2) modify the library board’s determination regarding the amount of pay increases for library personnel.

After discussing the prior Attorney General’s Opinions in 41 Op. Att’y Gen. No. 91 (1986) and 42 Op. Att’y Gen. No. 98 (1988), the Attorney General noted that, while the Big Horn County Library was funded through the general fund rather than through the library tax levy authorized by Mont. Code Ann. § 22-1-304, this “does not allow county commissioners to usurp the library trustees’ statutory authority in setting the library’s budget and compensation for the library staff.” The Attorney General observed that in enacting the statutes regarding the formation and operation of free public libraries, “the legislature clearly intended that library trustees be given independent power to manage and operate libraries without the threat of being censored by a city or county government.” The Attorney General reaffirmed the express statutory authority of library boards:

To hold that a board of county commissioners could usurp the library trustees’ express statutory authority by simply funding the library’s budget through the

general fund would defeat the very purpose of free public libraries and render meaningless §§ 22-1-301 to -317. Accordingly, if the county commissioners fund the library's budget through the general fund, the power to decide the budget and library staff compensation still rests with the library trustees as set forth in Mont. Code Ann. §§ 22-1-309 and -310.

The Attorney General also recognized that when a county chooses to fund its library through the general fund a public vote is not necessary for the county to provide the library with funding in excess of five mills.¹ However, he noted that while the commissioners have no authority to modify specific parts of the budget submitted by the library board, they do have authority to "limit the overall funding of the budget to five mills as if it were being funded pursuant to tax levy under Mont. Code Ann. § 22-1-304," observing that any other conclusion would allow library trustees to adopt a budget that could assume the entire general fund levy.

The 2002 Opinion 49 Op. Att'y Gen. No. 16 (2002)

The Broadwater County Attorney asked the Attorney General whether the local library board had the authority to require the Broadwater County Commissioners to levy five mills to support the library. The Attorney General first noted that the 2001 Montana Legislature had passed House Bill (HB) 124, which made significant changes in the laws relating to local government and taxation. Specifically as it relates to libraries, HB 124 amended Mont. Code Ann. § 22-1-304 to delete the former reference to a five-mill levy. As amended, the statute authorizes the county to simply levy mills for support of the library, without reference to the number of mills levied, provided the budget fits within the restrictions of Mont. Code Ann. § 15-10-420..

In place of the numeric levies that were formerly found in Mont. Code Ann. § 22-1-304 and other statutes, Mont. Code Ann. § 15-10-420 as amended allows a county to levy sufficient mills to raise the amount of property tax raised in the previous year, with an upward adjustment to account for inflation. The Attorney General noted that since the reference to a five-mill levy has been eliminated from Mont. Code Ann. § 22-1-304, there is no longer a statutory basis to argue that the library board can require county commissioners to levy five mills for support of the library budget.

Nevertheless, the Opinion recognized the continuing significance of previous Attorney General's Opinions dealing with the authority of library boards:

In my opinion, the 2001 statutory changes . . . did not delete the library board's authority to determine the amount of financial support required by the library, *nor did they confer on the county commissioners the authority to modify the library budget submitted by the library board.* (Emphasis added).

It is therefore my opinion that [HB 124] did not give the board of county commissioners the authority to modify the budget submitted by the library board pursuant to Mont. Code Ann. § 22-1-309(1), provided that budget fits within the provisions of Mont. Code Ann. § 15-10-420. . . . [T]hat statute, as amended in 2001, limits the county to the number of mills required to raise the amount of money raised in the previous fiscal year, subject to statutory adjustments. Under the reasoning of 48 Op. Att'y Gen. No. 3 (1999), the budget which the library board may require the commissioners to adopt is limited to the amount budgeted in the prior year as adjusted pursuant to section 15-10-420.

¹ In 2001 the Montana Legislature amended Mont. Code Ann. § 22-1-304 to delete the reference to a five-mill levy. The effect of the amendment was analyzed in 49 Op. Att'y Gen. No. 16 (2002), discussed below.

The Attorney General's correctly concluded that HB 124, passed by the 2001 Legislature, did not affect the respective authority of library boards and local governing bodies with respect to library budgets. However, as discussed below, some ten years later the Attorney General acknowledged that the analysis in the 2002 Opinion was "incomplete."

The 2001 Legislative Changes and the 2012 Opinion

The four Attorney General's Opinions discussed above clearly and consistently recognized the broad statutory powers and duties of library boards of trustees; authority that enables library boards to manage and operate a library "largely independent of city or county control." However, an Attorney General's Opinion issued last year changed the landscape somewhat.

54 Op. Att'y Gen. No. 7 (2012)

The Livingston City Attorney posed several questions regarding its relationship with the Livingston-Park County Public Library. The main question asked was whether the library board, by adopting a budget, could require the city and county to levy a sufficient amount to fund the budget as proposed by the board. The Attorney General reviewed previously issued opinions, as well as legislative changes made in the 2001 session. In particular, the Attorney General noted that the 2001 Legislature enacted Mont. Code Ann. § 7-6-4035, which provides in relevant part: "The proposed budget and mill levy *for each board, commission, or other governing entity are subject to approval by the governing body.*" (Emphasis added). The Opinion also referred to the enactment of Mont. Code Ann. § 7-6-4036, which provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-4034.

The Opinion determined that the 2001 legislative changes "upended the funding of public libraries," changing the law from "a scheme in which library boards had complete control over the library budget . . . to a scheme in which . . . the library board's proposed budget was subject to approval by the local governing body."

The 2012 Opinion acknowledged that to the extent the 2002 Attorney General's Opinion failed to address Mont. Code Ann. §§ 7-6-4035 and -4036, its analysis was incomplete and its holding was inapplicable to the questions presented by the Livingston City Attorney. To be fair, however, the 2002 Opinion only addressed HB 124, a lengthy and very complex bill known as "the Big Bill." The Attorney General in the 2002 Opinion correctly determined that HB 124 did not change the respective budgetary powers of library boards and local governing bodies. The 2002 Opinion did not, however, address Senate Bill 138, passed in the same 2001 session, which enacted Mont. Code Ann. § 7-6-4035 and -4036, discussed above. These are the two statutes that place approval authority over library budgets directly in the hands of local governing bodies.

The 2012 Opinion also distinguished the Attorney General's Opinions issued prior to the 2001 legislative changes, finding them inapplicable to the extent their holdings conflict with the 2001 changes to the statutes. Other aspects of those Opinions remain valid, however.

Conclusion

The 2012 Opinion establishes new parameters on the relationship between a library board and the local governing body in the case of the preparation and approval of the library's

budget. The library board still has the statutory responsibility under Mont. Code Ann. § 22-1-309(6) to “prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds.” However, the budget prepared by the board is ultimately subject to approval by the local governing body. The 2012 Opinion did, however, recognize that library boards have the power to:

- Determine how to use unspent funds in the library reserve fund; and
- Determine the *details* of their budget, such as hiring and firing, fixing salaries, prescribing duties of library employees, personnel administration, etc.

Thus, while the 2012 Attorney General’s Opinion acknowledges that local governing bodies have final approval over budgets prepared by library boards, the Opinion also implicitly recognizes the basic principle that was first established in the 1986 Opinion – that library boards retain “responsibility for *administering* the library in a manner largely independent of city or county control.”